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THE OFFICIAL MONTH IN REVIEW

PRESIDENT Quirino formally inaugurated the newly installed radio-telephone circuit between Manila and Cebu on March 1 with three-minute telephone conversations with ex-President Sergio Osmeña and Mayor Miguel Raffiñan in Cebu City.

VICE-PRESIDENT Fernando Lopez urged a dispassionate study of communism and a re-examination of democracy as the best way of defeating the Red menace in a speech delivered on the opening day of the Fifth World Congress of the Junior Chamber International at the Far Eastern University auditorium on March 1. "The loud claims of communism are but blatant claims. Compared to the promise of democracy, that of communism is but empty promise which can never be realized," Mr. Lopez told the youthful delegates from all over the world.

ECNOMY, efficiency and simplicity" were the by-words stressed by President Quirino in his instructions to members of the Government revamp commission following their induction into office on March 2 at the Council of State room in Malacañan. "The public expects us to accomplish things never accomplished in the past," the Chief Executive stated. "There will be criticisms but don't mind them. Just do what you think is right," he added. Inducted were Don Ramon Fernandez, chairman; Commissioner Pio Joven, RFC Governor Pablo Lorenzo, Jose Paez, Teofilo Sison and H. B. Reyes, members; and Commissioner Jose Gil, executive secretary.

THE Philippine Government formally entered her accession to the International Wheat Agreement, according to advices received by the foreign office from Ambassador Joaquin Elizalde on March 2. The Philippines became the 43rd country to adhere to the terms of the International Wheat Agreement under which the local government is guaranteed a quota of 196,000 metric tons of wheat equivalent to 141,000 metric tons of flour over the next five-year period ending 1953.

THE Cabinet, in its regular meeting March 3, (1) approved a request of the Secretary of National Defense to make representations with the Far Eastern Commission for the payment of the cost for replacement of the presidential yacht *Casiana* which was destroyed during a Japanese raid in 1942; (2) directed the Department of Foreign Affairs to seek immediate determination of the status of the sunken ships in Philippine waters in connection with a move to cancel the contract of Mollers and Choy of Hongkong for salvage work; and (3) authorized the sending of a group of pensionados to undergo training in various phases of aviation under the Philippine Rehabilitation Act of 1946.

Meanwhile, in the same session, drafts of proposed legislations regarding tax collection and labor were submitted by Secretary of Finance Pio Pedrosa and Secretary of Labor Primitivo Lovina, respectively, for Cabinet study and consideration.

VICE-PRESIDENT Fernando Lopez, in his capacity as chairman of the Government Enterprises Council, pledged to give small industrialists all possible opportunities to share the benefits of the country's industrialization program. He gave this assurance to a group of SIMSOP officials (Small Industrialists and Machine Shop Owners of the Philippines) who called at Malacañan in connection with their convention in Manila, on March 4.

President Quirino paused from his pressing duties on March 4 to welcome personally delegates to the fifth international convention of the Junior Chamber International which was held in Manila. Assuring the

hospitality of the country and expressing gratitude over the selection of Manila as the site of their fifth congress, the President told the youthful world delegates "Here, in miniature, you may see a new world come into being, suspended between the darkness and the light, caught in the crossfire of embattled ideologies, yet knowing that its only proper destiny is freedom."

MALACAÑAN had a distinguished visitor on March 4 in the person of Admiral Sir Patrick Brind, RN, commander of the British Navy, who arrived aboard the British dispatch vessel H.M.S. *Alert* to participate in the joint U.S.-British fleet maneuvers in Philippine waters. The English visitor called on the President and the Vice President, and was invited to a reception in the evening at Malacañan given in honor of the Jaycee International.

PRESIDENT Quirino literally bundled up all official duties on March 5 and took them up to Baguio city where he was expected to stay for a month or so to recuperate fully from his recent kidney operation. The President was accompanied by members of his family and official guests including Admiral and Lady Patrick Brind.

VICE-PRESIDENT Fernando Lopez opened the third annual convention of the National Federation of Sugarcane Planters Association in Bacolod City March 7, with a stern warning that the real problem of the sugar industry will come after 1954 when sugar ceases to be on the U. S. free duty list. Admittedly dark as the future of the sugar industry appears to be, the Vice-President however expressed hopes that "with the preferential treatment in the United States market, Philippine sugar may yet reach its production peak this year or in 1951."

A message from the President was also read before the convention by PNB Vice-President J. D. Quintos. [See HISTORICAL PAPERS AND DOCUMENTS for full text of the President's message.]

THE construction of a permanent inaugural grandstand on the Luneta was announced March 8 by a joint executive committee assigned to look into the project. Partial funds for the grandstand, the committee announced, will be appropriated from the unexpended balance of the collections raised in 1946 in connection with the inauguration of the Republic. The balance amounting to ₱250,000 was earmarked for the construction of the central portion of the granstand.

VICE-PRESIDENT Fernando Lopez sojourning in his hometown in Iloilo city, vigorously urged the reelection of President Quirino before a large group of city residents during a dinner given in his honor by the market vendors association of the city, on March 9. The Veep, during a two-day stay in the city, conferred with Iloilo officials and war veterans.

THE National Urban Planning Commission took immediate steps to select a fitting site for an eight-foot bronze replica of the Statue of Liberty which was donated by Jack Whitacker, through the Boy Scouts of America to the Boy Scouts of the Philippines, as an expression of scout brotherhood and goodwill. Among the sites suggested were Engineer Island, atop the proposed reviewing stand on the Luneta, and on the center island rotonda between the Legislative building and City Hall.

UNDERSECRETARY of Foreign Affairs Felino Neri and United States Ambassador Myron M. Cowen, March 11 agreed to the supplements to the Military Assistance Agreement, which in effect extends for another two years until July 4, 1953, American military assistance to the Philippines which originally would have expired on July 4, 1951. Under the supplemental agreement, the Philippine Government reserves the right to request further extension of the agreement after July 4, 1953.

PRESIDENT Quirino's policy of providing "land for the landless" received effective implementation when wide areas of public lands in Zamboanga and Pangasinan were declared open for agricultural purposes. The Zamboanga area consists of 1,650 hectares situated in the municipal district of

Manicahan, while the Pangasinan area consists of 421 hectares in the municipality of Bani.

THE impending war clouds and the responsibility of the Philippine Republic as a member of the concert of nations formed the theme of President Quirino's 17th radio chat delivered March 15 from the Mansion House in Baguio city. "Our country is in the midst of a region which at this moment has become the focal point of international tension. . . . danger has come close again, our own national security is threatened, and our capacity for survival is being put to a severe test," the Chief Executive declared. [See HISTORICAL PAPERS AND DOCUMENTS for full text of the President's radio chat.]

THE move to grant greater autonomy to local governments received a strong endorsement from Vice-President Fernando Lopez in his address before the convention of provincial governors and city mayors in Baguio city on March 17. This was however accompanied with an appeal to the conventionists to disregard politics in the face of national and international politics which beset the young Republic. "What is needed in any country today is not a working majority but a majority working," Lopez declared.

VICE-PRESIDENT Fernando Lopez in his capacity as chairman of the Government Enterprises Council intervened in the Manila Hotel controversy involving the lay-off of some 150 laborers and employees who brought the case to the Vice-President on March 22. A committee composed of both the management and employees group was formed to explore the possibilities of reinstating the laid-off employees without causing any prejudice to the interest of the hotel management.

WITH the joint efforts and cooperation of the Bureau of Telecommunications and the Office of Public Information at Malacañan, an up-to-the-minute news service to all parts of the Archipelago was inaugurated on March 22 in line with the Government's program to reach the masses with up-to-the-minute information.

FIL-AMERICAN relationship was reiterated on March 23 with the symbolic transfer of the newly reconstructed Jones Bridge by the American Government to the Philippine Republic. Vice-President Fernando Lopez, representing President Quirino who was in Baguio, and U. S. Ambassador Myron M. Cowen presided over the impressive ceremonies marking the formal turnover of the bridge. In his speech, the American envoy expressed the hope that not only Filipinos but Americans and other nationalities as well, may be reminded of the simple principle of justice and goodwill between two friendly peoples, as memorialized by the Jones Bridge. Vice-President Lopez responding assured that the bridge would remain a lasting symbol of the mutual friendship and congenial cooperation between the peoples of the Philippines and the United States.

PRESIDENT Quirino on March 24 signed in Baguio an executive order fixing government office hours from 8 a.m. to 1 p.m. during the summer season beginning April 1 to June 15. In issuing the executive order, the President directed the members of his Cabinet to circularize their personnel to devote the off hours to food production.

Meanwhile, the President during the Cabinet meeting on March 24 directed Secretary of Finance Pio Pedrosa and Secretary of Agriculture Placido Mapa to draw up a list of urgent economic development projects to determine the allocation of the remaining ₱90,000,000 in economic development funds.

The Cabinet in the same meeting (1) approved the plan of the Labor-Management Board to hold a labor-management conference in the future;

(2) approved for disposal to the Philippine Foundation for the Crippled a 16-hectare land in Alabang, Rizal; (3) approved the recommendation of the AFP Chief of Staff to adopt the policy of not suspending any of its personnel who has a standing charge against him falling within the purview of the amnesty proclamation; and (4) authorized Philippine participation in the International Fair at Milan, Italy.

PRESIDENT Quirino's food production campaign was re-echoed by Vice-President Lopez in a speech before the convention of the nation's technical agriculturists at the Manila Hotel on March 25. Pointing out that the Philippines is primarily an agricultural country, the Vice President called upon the conventionists whom he called "soldiers of the soil and missionaries of our economic stability and security," to help promote the food production campaign program of the President.

AMUTUAL expression of satisfaction over the efforts of their respective governments at promoting closer and better relations between their countries was made by Vice-President Fernando Lopez and Australian Minister Percy E. Spender who was an official Philippine visitor. Previous to his call on the Vice President, the Australian envoy had paid his respects to President Quirino in Baguio city.

PROBLEMS affecting the local transportation industry were threshed out "across the table" by Vice-President Lopez with representatives of the National Land Transportation Operators Association who called at Malacañan on March 28.

DR. Regino M. Ylanan, national physical director and at the same time ex-officio secretary-treasurer of the Philippine Amateur Athletic Federation, was assigned on special detail for six months in the United States and Europe to study and observe various phases of physical education in foreign schools, colleges and universities. Dr. Ylanan's travel was authorized by the President upon recommendation of Secretary of Education Prudencio Langcauon.

THE tremendous challenge facing every Filipino in relation to his obligations to his country and to the world, was outlined by Executive Secretary Teodoro Evangelista at the second biennial convention of the National YWCA of the Philippines on March 28 in Baguio city. "Today the world is divided by antagonistic philosophies and economic systems. . . . we must work together as a team to meet common problems. . . . we cannot fail; we are making history—this is our challenge," the Executive Secretary emphatically declared.

AFRANK and open discussion of the problems facing the Government was made by President Quirino in his address before the 11th biennial convention of the National Federation of Women's Clubs of the Philippines held at the Escoda Memorial on March 31.

Asserting that the Republic is passing through a grave crisis today, the President analyzed the three major problems besetting the country, viz.: peace and order; food production and total economic mobilization; and the problem of developing a new sense of honesty and integrity among people whether inside or outside the Government.

In the face of such a serious situation the President however gave assurances of the efforts exerted by the Government to solve these problems and at the same time called upon every citizen to cooperate in their solution.

Because of his inavailability, the Chief Executive's message was read by Executive Secretary Teodoro Evangelista. [See HISTORICAL PAPERS AND DOCUMENTS for full text of the President's address.]

A MAJOR change in the Armed Forces of the Philippines was announced by Malacañan on March 31 with the issuance by President Quirino of Executive Order No. 308. The following were the main features of the reorganization:

1. Division of the Armed Forces into five major commands: the Constabulary, the Ground Force, the Naval Patrol, the Air Force and the Service Command.
2. Placing of the five commands under the direct command of a Commanding General whose office includes a Deputy Commanding General and assistants to be appointed by the President.
3. Creation of the General Military Council composed of the Commanding General and all commanders of major commands. . . . the Council to advise the Secretary of National Defense on administrative and operational functions of the armed forces.
4. The Philippine Constabulary to continue its present duties as a national police force under the operational control of the Secretary of the Interior.
5. Creation of the new Service Command to handle the general supply, transportation and other services of the entire Armed Forces.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 305

REGULATING THE IMPORTATION OF WHEAT FLOUR, AUTHORIZING THE PHILIPPINE RELIEF AND TRADE REHABILITATION ADMINISTRATION (PRATRA) TO EFFECTUATE CONTROL OF ITS IMPORTATION AND DISTRIBUTION, AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by the Constitution and laws of the Philippines, and in order to implement and carry into effect the commitments of the Government of the Republic of the Philippines under the International Wheat Agreement, which was duly accepted by the Government of the Republic of the Philippines on February 17, 1950, in accordance with its constitutional processes, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. From and after the date of effectivity of this Order, no wheat flour shall be imported into the Philippines without an import license duly issued by the Philippine Relief and Trade Rehabilitation Administration (PRATRA) in accordance with the provisions of this Order. Such license shall be signed "By authority of the President: General Manager, PRATRA."

SEC. 2. The yearly guaranteed purchases of the Philippines of 196,000 metric tons of wheat shall be imported in the name of the Republic of the Philippines during the effectivity of the International Wheat Agreement ending July 31, 1953. Said quantity shall, in turn, be allocated to local consumers, dealers and/or importers of flour who may be authorized by the General Manager of the PRATRA pursuant to the rules and regulations to be promulgated by a Board hereinafter constituted.

SEC. 3. There is hereby created a Board composed of the General Manager of the PRATRA as Chairman, a representative each of the Departments of Commerce and Industry, Foreign Affairs, and the Central Bank of the Philippines, and the President of the Chamber of Commerce of the Philippines, as members. The Board is hereby authorized to issue the rules and regulations referred to in the next preceding section governing the allocation and transfer of quotas, issuance of licenses, and such other

matters as may be necessary to effectuate the proper enforcement of the rights and obligations of the Government of the Republic of the Philippines under the International Wheat Agreement.

SEC. 4. A person, firm, or establishment to be entitled to a grant of yearly wheat flour quota under the International Wheat Agreement must be:

- (a) One duly licensed or registered to do business in the Philippines and has paid all lawful taxes and fees due therefrom.
- (b) Registered with the PRATRA for quota allocation and licensing.

SEC. 5. Any consumer, dealer and/or importer of flour who may be granted yearly wheat flour quota as provided for in the preceding sections shall file his application therefor with the PRATRA, stating his:

- (a) Name and address of business;
- (b) Corresponding license or registration papers;
- (c) Date of arrival in Manila or in any other port of landing.
- (d) Flour consumption or importation into the Philippines or local flour purchases during the year of 1948 and 1949, giving the name of steamer bringing in the flour, the date of arrival, the port of origin and destination, the supplies, the date of invoice, c.i.f. Manila price, brands and the quantity unloaded in term of 50-pound bags; or intention to import flour, specifying suppliers, brands, approximate monthly value of imports, etc.;
- (e) Other data that may be required.

SEC. 6. To guarantee the importation and arrival of the yearly guaranteed purchases of the Philippines under the terms, conditions and stipulations of the International Wheat Agreement, direct consumers and/or importers or dealers who were granted yearly flour quotas shall be required by the PRATRA:

- (a) To execute contracts binding such person, firm or establishment to import or bring into the Philippines in equal regular monthly shipments their yearly flour quota within the period of one year from the date of such grant; and
- (b) To file the necessary performance bond.

SEC. 7. Before an import may be issued, the applicant shall file with the PRATRA a written application, under oath, containing the following information.

- (a) The name and place of business of the applicant;
- (b) Quota certificate number and quantity of flour covered;
- (c) The name and address of the flour mill or mills shipping the flour together with its brand and poundage;
- (d) The port of origin of the flour to be imported;
- (e) The port of destination;
- (f) C.i.f. Manila price; and

SEC. 8. An import license issued as provided shall remain valid during the quota period in which it was issued. If any of the consumers, dealers and/or importers shall fail

to bring in the flour shipment for which an import license had been issued, his license and contracts executed in connection therewith may be cancelled, the performance bond confiscated, and the flour may be reallocated to other consumer, dealer and/or importer, pursuant to such rules and regulations as may hereafter be promulgated by the Board.

SEC. 9. Flour shipments covered by payments made by the importer prior to the date of effectivity of this Order, or by irrevocable letters of credit or authorities to purchase issued prior to said date, and so certified by the issuing bank, shall be permitted to enter the country but shall be charged to present and/or future quotas of the importer; however, the importer shall first obtain a license and pay the corresponding fees before the shipment may be made or released from customs custody. Similarly, flour in inland transit from point of origin, or on dock, on lighter, or on exporting vessel, on the date of effectivity of this Order, if such circumstance can be proved to the satisfaction of the PRATRA shall be admitted into the country but shall be charged to present and/or future quotas of the importer; however, the importer shall first obtain a license and pay the corresponding fees before shipment may be made or released from customs custody.

SEC. 10. A filing fee of ₱2.00 shall be charged for every application for an import license. A license fee of ₱10.00 shall be charged for each ₱1,000 of the c.i.f. value of the wheat flour covered by an import license, and ₱1.00 for every ₱100 or fraction thereof.

SEC. 11. License fees collected in accordance with the preceding section shall be used to defray all administrative expenses incurred in the enforcement of the provisions of this Order.

SEC. 12. Wheat or wheat flour imported in violation of this Order and of the rules and regulations promulgated by the Board shall be subject to forfeiture in accordance with the procedure established under Chapter 39 of the Administrative Code and the importer thereof shall be disqualified from obtaining a license to import flour under the International Wheat Agreement.

SEC. 13. Any violation by an importer of the provisions of this Order and of the rules and regulations promulgated by the Board shall serve as a ground for the immediate revocation of his license to do business in the Philippines, and in the case of aliens shall be regarded as sufficient cause for his deportation.

SEC. 14. This Order shall take effect on March 17, 1950, and all flour shipments leaving any port of embarkation on or subsequent to said date shall be subject to the provisions of this Order.

Done in the City of Baguio, this 17th day of March, in the year of Our Lord, nineteen hundred and fifty and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 306

AMENDING EXECUTIVE ORDER NO 297, DATED
DECEMBER 24, 1949

By virtue of the powers vested in me by Republic Act No. 330 entitled "An Act authorizing the President of the Philippines to establish a system of import control by regulating imports of non-essential and luxury articles, creating an Import Control Board, authorizing the issuance of rules and regulations to carry into effect such control, and penalizing violations of this Act," as amended by Republic Act No. 423, I Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 2 of Executive Order No. 297 as amended by Executive Order No. 302 is hereby further amended to read as follows:

"Articles or materials included in Appendix A which are necessary for the operation of locally established industries, those needed in construction projects covered by rehabilitation contracts financed partly or wholly by war damage funds, AND MATERIALS AND SUPPLIES NEEDED BY THE ARMED FORCES OF THE PHILIPPINES AND THE PHILIPPINE CONSTABULARY FOR MILITARY USE, as determined in each case by the Import Control Board, shall not be subject to the percentage reductions fixed in Appendix B, but the manufacturer, contractor, OR THE SAID ARMED FORCES OF THE PHILIPPINES AND PHILIPPINE CONSTABULARY shall apply for import permit therefor."

SEC. 2. This Order shall take effect upon its promulgation.

Done in the City of Baguio, this 18th day of March, in the year of Our Lord, nineteen hundred fifty and of the independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 307

FIXING OFFICE HOURS DURING THE
HOT SEASON

Pursuant to the provisions of section 564 of the Revised Administrative Code, the office hours of all Government bureaus and offices, including the provincial, city and municipal governments, during the period from April 1 to June 15, 1950, both dates inclusive, are hereby reduced to five continuous hours which shall be from eight o'clock in the morning to one o'clock in the afternoon. The provisions of this Order shall not apply to the offices in the City of Baguio, whether national, provincial or municipal.

This Order shall not oblige the Head of any department, bureau, or office to reduce as herein provided the office hours in his department, bureau, or office, but leaves the same in his discretion subject to the requirements of the service.

Done at the City of Baguio, this 24th day of March in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 308

REORGANIZING THE ARMED FORCES OF THE
PHILIPPINES

By virtue of the powers vested in me by the Constitution and the authority granted by Republic Act No. 422, I, Elpidio Quirino, President of the Philippines, do hereby direct:

SECTION 1. Under the administrative supervision of the Secretary of National Defense, the Armed Forces of the Philippines shall be divided into five major commands as follows:

- (a) Philippine Constabulary
- (b) Philippine Ground Force

- (c) Philippine Naval Patrol
- (d) Philippine Air Force
- (e) Philippine Service Command

SEC. 2. All the five major commands shall be under the direct command of the Commanding General of the Armed Forces of the Philippines. The Philippine Constabulary shall continue to perform its present duties as a national police force, under the operational control of the Secretary of the Interior.

SEC. 3. The commander of each major command shall have the powers generally conferred upon the chiefs of bureaus and offices.

SEC. 4. The Office of the Commanding General, Armed Forces of the Philippines, shall consist of the Commanding General, the Deputy Commanding General, and such assistants as may be necessary with the approval of the President. Any mention of the Chief of Staff and the Deputy Chief of Staff, Armed Forces of the Philippines, in any existing law, rule or regulation shall hereafter be understood to refer to the Commanding General and Deputy Commanding General, Armed Forces of the Philippines, respectively.

SEC. 5. The Philippine Service Command shall be responsible for the following:

(1) The procurement, custody, shipment, warehousing, issue, sale of, and accounting for, all supplies including food, fuel, clothing medicines, general stores and other property and services of the Armed Forces of the Philippines;

(2) The coordination of the operation of the Armed Forces supply system and the performance of supply functions within that system, with the advice of the Commanders of the major commands;

(3) The keeping of money and property accounts of the Armed Forces to include appropriation and cost accounting of all military activities and cost inspection under all other types of cost contracts including audits of books and records of contractors;

(4) Authorizing and controlling the transportation of the Armed Forces property and of authorized baggage of armed forces personnel;

(5) Chartering merchant vessels for transportation purposes and procuring, operating and administering cargo terminal facilities to include the procuring and assigning of stevedores;

(6) The design, development, procurement, manufacture, distribution, maintenance, repair, alteration and material effectiveness of all ordnance equipment, the research therein and all pertinent functions relating thereto including the control, storage and terminal facilities for, and the storage and issue of ammunition, and ammunition details;

(7) The procurement, custody, warehousing and issue of signal equipment and supplies and the coordination of signal communications between major commands;

(8) The safeguarding of the health of personnel in the Armed Forces, providing care for the sick and injured, providing medical and dental attendance to retired Armed Forces personnel, to dependents of persons in the Armed Forces and to civilian employees who suffer injury and become sick while at work, and all pertinent matters relating thereto;

(9) The design, planning, development, procurement, construction, alteration, cost estimates and inspection of all construction projects and public utilities in the Armed Forces including the repair thereof;

(10) The acquisition and disposal of real estate and the maintenance of records thereof, and the custody of real property no longer required for the use to which assigned;

(11) Making an annual survey and estimating the funds required for the maintenance of buildings and other structures, public utilities, construction, transportation submitting appropriate recommendations in connection therewith to the responsible Commander having management and control;

(12) Coordinating the procurement of utility services required by the various installations of the Armed Forces;

(13) Maintaining a record of the location of all vehicles of the Armed Forces.

SEC. 6. A General Military Council is hereby created to be composed of the Commanding General, Armed Forces of the Philippines, and all the Commanders of the major commands to advise the Secretary of National Defense on the administrative and operational functions of the Armed Forces of the Philippines.

SEC. 7. The current appropriations for the Armed Forces of the Philippines shall be adjusted by the Secretary of National Defense with the approval of the President.

This Order shall take effect upon its promulgation.

Done in the City of Baguio, this 30th day of March, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 170

EXTENDING UP TO AND INCLUDING APRIL 15, 1950, THE PERIOD FIXED IN PROCLAMATION NO. 167, DATED JANUARY 6, 1950, FOR THE THIRD ANNUAL FUND CAMPAIGN OF THE PHILIPPINE NATIONAL RED CROSS.

WHEREAS, the period from February 15 to March 15, 1950, was designated under Proclamation No. 167, dated January 6, 1950, for the Third Annual Fund Campaign of the Philippine National Red Cross; and

WHEREAS, it appears that the Philippine National Red Cross needs additional time to carry out its campaign successfully;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby extend up to and including April

15, 1950, the period designated under Proclamation No. 167, dated January 6, 1950, for the Third Annual Fund Campaign of the Philippine National Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 16th day of March, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 171

MAKING PUBLIC THE ACCEPTANCE OF THE INTERNATIONAL WHEAT AGREEMENT FOR THE REPUBLIC OF THE PHILIPPINES, SUBJECT TO CERTAIN RESERVATIONS.

WHEREAS, an International Wheat Agreement was opened for signature in the English and French languages, at Washington, D. C., until April 15, 1949, and signed by the authorized representatives of forty-two countries, including the Philippines;

WHEREAS, the objectives of the said Agreement are to assure supplies of wheat to importing countries and to guarantee markets to exporting countries at equitable prices;

WHEREAS, the Senate of the Philippines, by its Resolution No. 12, adopted on February 15, 1950, has given its concurrence to the acceptance by the President of the Philippines of the International Wheat Agreement, with the understanding that nothing contained in the Agreement shall be construed as in any way curtailing or abridging the right, authority and discretion of the Philippine Government to distribute and allocate among the private importers in the Philippines the guaranteed purchases of the Philippine Government;

WHEREAS, the said Agreement was duly accepted by the President of the Philippines, subject to the understanding contained in the resolution of concurrence of the Senate of the Philippines and the instrument of acceptance of the Government of the Republic of the Philippines embracing the said understanding was deposited with the Government of the United States of America on February 27, 1950; and

WHEREAS, pursuant to Article XX of the Agreement, the said Agreement will come into force with respect to the Government of the Republic of the Philippines on the date of deposit of its instrument of acceptance, to wit, on February 27, 1950:

Now, THEREFORE, be it known that I, Elpidio Quirino, President of the Philippines, in pursuance of the aforesaid concurrence of the Senate of the Philippines and subject to the understanding that nothing contained in the Agreement shall be construed as in any way curtailing or abridging the right, authority and discretion of the Philippine Government to distribute and allocate among the private importers in the Philippines the guaranteed purchases of the Philippine Government, do hereby make public the acceptance of the Government of the Republic of the Philippines of the International Wheat Agreement, a certified copy of which is hereto attached, which was open for signature in the English and French languages at Washington, D. C., until April 15, 1949, and had been signed by the authorized representatives of forty-two countries, including the Philippines, to the end that the same and every article and clause thereof may be observed with good faith by the Republic of the Philippines and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 17th day of March, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 172

DECLARING THE TWENTY-FIRST DAY OF DECEMBER OF EACH YEAR AS "ARMED FORCES DAY"

WHEREAS, the Philippine Army, now the Armed Forces of the Philippines, was officially created and organized with the approval of the National Defense Act on December 21, 1935;

WHEREAS, the *esprit de corps* among the members of the Armed Forces is greatly enhanced by instilling into the mind and heart of every soldier that pride in the tradi-

tions of his organization, that spirit of oneness, and that singleness of purpose, all of which are essential for securing cohesive and successful military action; and

WHEREAS, to attain this objective, it is imperative that a day of each year be designated on which all members of the Armed Forces of the Philippines may devote their time, thought and energies in extolling and commemorating the birth of their organization;

Now, THEREFORE, I, Elpidio Quirino, President of the Philippines, do hereby declare December 21 of each year as "Armed Forces Day" and call upon all members of the Armed Forces, both in the active and inactive service, to join in the observance of the day in such manner as may be determined by the Chief of Staff.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 21st day of March in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 173

RESERVING FOR CONSTABULARY PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF TARLAC, PROVINCE OF TARLAC, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of Section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for constabulary purposes under the administration of the Philippine Constabulary, subject to private rights, if any there be, a certain parcel of the public domain, situated in the municipality of Tarlac, province of Tarlac, Island of Luzon, and more particularly described in the cadastral survey of Tarlac, to wit:

"Lot 1543—Tarlac Cadastre

A parcel of land (Lot 1543 of the cadastral survey of Tarlac, G. L. R. O. Cad. Record No.), situated in the barrio of San Roque, municipality of Tarlac, Province of Tarlac. Bounded on the NE. by Municipal Cemetery and Lots 1378, 1484, 1356, 1355, 1337, 1334, 1333, 1336 and 1314 of Tarlac Cad.; on the SE. by

property of Felix Carbonel; on the SW. by Lot 1543, Tarlac cad.; and on the NW. by road. Beginning at a point marked "1" on plan, being S. $35^{\circ} 24' E.$, 888.98 meters from B.L.L.M. 82, Tarlac cad. thence S. $24^{\circ} 35' W.$, 485.99 meters to point 2; thence N. $40^{\circ} 17' W.$, 238.34 meters to point 3; thence N. $16^{\circ} 24' E.$, 155.57 meters to point 4; thence N. $16^{\circ} 24' E.$, 189.17 meters to point 5; thence S. $74^{\circ} 44' E.$, 19.84 meters to point 6; thence S. $74^{\circ} 44' E.$, 27.56 meters to point 7; thence S. $74^{\circ} 44' E.$, 15.04 meters to point 8; thence S. $74^{\circ} 44' E.$, 29.86 meters to point 9; thence S. $74^{\circ} 44' E.$, 37.28 meters to point 10; thence S. $74^{\circ} 44' E.$, 15.04 meters to point 11; thence S. $74^{\circ} 44' E.$, 26.42 meters to point 12; thence S. $74^{\circ} 44' E.$, 34.59 meters to point 13; thence S. $74^{\circ} 44' E.$, 15.70 meters to point 11; thence S. $74^{\circ} 44' E.$, thence S. $74^{\circ} 44' E.$, 15.08 meters to point 14; thence S. $74^{\circ} 44' E.$, 46.97 meters to the point of beginning; containing an area of 98,678 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old corners; bearings true; declination $0^{\circ} 16' E.$; date of the cadastral survey, April 4, 1933.

NOTE.—This lot is equivalent to Lot 1 of plan pr-158."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 21st day of March in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 111

FURTHER AMENDING PARAGRAPH 4 OF ADMINISTRATIVE ORDER NO. 41, DATED JUNE 17, 1946, ENTITLED "CREATING THE PHILIPPINE COMMITTEE OF FOOD AND AGRICULTURE," AS AMENDED BY ADMINISTRATIVE ORDER NO. 39, DATED JULY 12, 1947.

The fourth paragraph of Administrative Order No. 41, dated June 17, 1946, as amended by Administrative Order No. 39, dated July 12, 1947, as hereby further amended to read as follows:

"The Philippine Committee of Food and Agriculture shall be composed of a Chairman and an Executive Secretary, to be appointed by the President; a representative each on crop production, livestock production, forestry, fisheries, agricultural engineering and soil conservation, to be designated by the Secretary of Agriculture and Natural Resources; a representative on irrigation, to be designated by the Secretary of Public Works and Communications;

two representatives on human nutrition, one to be designated by the Secretary of Health, and one by the Chairman of the Institute of Nutrition Board; a representative each on animal nutrition and economics of agriculture, to be designated by the President of the University of the Philippines; three representatives on food utilization, one to be designated by the President of the University of the Philippines, one by the Secretary of Education, and one by the Secretary of Agriculture and Natural Resources and two representatives of the Philippine Farmers Association."

Done in the City of Manila, this 3rd day of March, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 112

REMOVING MR. FRANCISCO MARTINEZ FROM OFFICE AS PROVINCIAL TREASURER OF LEYTE

Mr. Francisco Martinez, Provincial Treasurer of Leyte, is charged with the following irregularities:

1. That respondent personally dealt with, and delivered to, Manila merchants requisitions for supplies, materials and equipment contrary to existing regulations;
2. That he made purchases of supplies, etc., from Manila merchants without public bidding or the intervention of the Procurement Office;
3. That he was extremely careless and negligent in passing payments for articles at exceedingly high prices;
4. That he purchased printed forms at exorbitant prices without previous authority;
5. That he purchased school supplies without the approval of the proper authorities;
6. That he purchased and accumulated a huge stock of supplies and materials worth the enormous sum of ₱2,727, 552.56; and
7. That in acquiring this big stock of supplies and materials, he used public and private trust funds.

After going over the record of this case, I find that charges Nos. 1, 4, and 7 have been satisfactorily explained.

With respect to charges Nos. 2 and 3, the respondent denies that the supplies and materials in question were purchased without public bidding or the intervention of the Procurement Office. He claims that the vouchers covering payments thereof were "supported by a letter or indorsement of that Office showing the Manila price of the articles or the reasonableness of the price as shown

in said letter or indorsement, except in the case of requisitions showing the prices opposite the corresponding articles on the face of such requisitions and which * * * already bore the approval of the Department of Finance when the same were submitted to the respondent for consideration." He also states that payment for the articles was made after the corresponding vouchers had been passed in audit by the auditor, and he had no reason to suspect that the latter would not allow strictly his duties in passing upon the vouchers submitted to him for preaudit; that most of the requisitions for supplies already bore, as stated above, the approval of the Department of Finance when they were presented to him for the first time, accompanied even in certain cases with personal letters or telegrams of highly placed officials in the General Auditing Office urging favorable action; and that despite pressure from above, he exerted efforts to protect the interest of the Government as shown by the fact that he had stricken out certain articles or reduced the quantities thereof.

I find respondent's explanation of these charges not entirely satisfactory. Considering the large quantities of the supplies and materials involved with value running into millions of pesos, even if pressure had been brought to bear upon him, he should have exercised extreme care in making the purchases for the province. The advance approval of most of the requisitions by the proper official in the Department of Finance should have warned him that there might be something irregular in it. Respondent did not go far enough in protecting the interest of the province.

Respondent admits charge No. 5 but explains that a requisition for these school supplies was originally made by the academic supervisor then in charge of the Division of Leyte; that subsequently the items called for therein were transcribed in another requisition, possibly by the dealer, for the signature of respondent; that as he was not then in Tacloban, the requisition was apparently brought to Manila; that the goods were shipped to Manila; that the goods were later shipped to Leyte, and the requisition accompanying the dealer's bill already carried the unqualified approval of the Department of Finance. He further explains that he signed the requisition and approved the vouchers covering payment of the articles after said vouchers had been initialed by the property clerk and the bookkeeper of his office; that these vouchers were duly preaudited; and that he should not be expected to go beyond the action of his superior and that of a coordinate official to inquire into the motives that inspired their actuation.

I consider respondent's explanation unsatisfactory. The action by the other officials and employees cited by

respondent cannot take the place of that which the regulations require should be done by the Director of Public Schools, the Secretary of Education and the Property Requisition Committee. Respondent simply overlooked these regulations, compliance with which would have saved him from this charge.

As regards charge No. 6 respondent explains that the advance approval by the Department of Finance of the corresponding requisitions prepared in Manila without his knowledge as requisitioning official led him to believe that there was need for a substantial stock of supplies to insure the continuous operation of the different governmental units of the province, demanded evidently by the prevailing conditions in the province and the strained relations between the United States and Russia, although he reduced the quantities of certain articles and struck out those not needed by the province. He further explains that he referred the vouchers covering payment of the articles to the property clerk for determination of the need therefor and had said vouchers submitted to the auditor for preaudit before effecting payment.

While the steps taken by respondent could be considered sufficient under ordinary circumstances, the unusual quantities of supplies and materials called for in the requisitions allegedly approved in advance by the corresponding official of the Department of Finance should have given him cause to doubt the motives that inspired such premature approval, and the supposed pressure exerted by high officials of the National Government that he expedite payment to the dealers should have been brought to the attention at least of the Secretary of Finance for his information and appropriate action.

The foregoing shows that respondent was grossly negligent in the performance of his official duties as a result of which the Province of Leyte suffered losses estimated at more than two million pesos arising from his improvident purchase of supplies and materials in quantities far beyond the need of the province and at prices very much higher than those prevailing or considered reasonable.

Wherefore, Mr. Francisco Martinez is hereby removed from office as Provincial Treasurer of Leyte.

Done in the City of Baguio, this 29th day of March, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER No. 169

February 27, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF BABATNGON, LEYTE

For the information and guidance of all concerned, publication is hereby made that, under date of February 27, 1950, the municipality of Babatngon, Leyte, has been classified by His Excellency, the President of the Philippines as fourth class, effective March 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 170

March 10, 1950

CLASSIFICATION OF THE MUNICIPALITY OF ALICIA, BOHOL

For the information and guidance of all concerned, publication is hereby made that the municipality of Alicia, Bohol, organized under Executive Order No. 264, series of 1949, has been classified by His Excellency, the President of the Philippines, under date of February 25, 1950, as fourth class, pursuant to the provisions of Republic Act No. 130.

The classification of this municipality shall take effect on the date it begins to exist as such.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 171

March 11, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF PURA, TARLAC

For the information and guidance of all concerned, publication is hereby made that, under date of February 10, 1950, the municipality of Pura, Tarlac, has been classified by His Excellency, the President of the Philippines, as third class, pursuant to the provisions of Republic Act No. 130, effective March 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 172

March 29, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF MADRIDEJOS, CEBU

For the information and guidance of all concerned, publication is hereby made that, under date of March 28, 1950, the municipality of Madridejos, Cebu, has been classified by His Excellency, the President of the Philippines, as second class, effective April 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

March 6, 1950

PROHIBITION OF OPERATION OF SLOT MACHINES (JACK POT)

*To all Provincial Governors and City Mayors:
The Chief of Constabulary:*

Several civic organizations have brought to the attention of this Department the operation of slot machines (Jack Pot) in some cities and municipalities, either upon license or mere tolerance of the corresponding local authorities. The press has time and again rightly condemned the operation of these machines as a social evil, prejudicial to the commonwealth.

The slot machine known as "Jack Pot" is a gambling device. This gambling device has been aptly called "one-armed bandit". Playing a slot machine requires neither skill, knowledge, nor thought. The player continuous putting in small change under the illusion of winning a very much bigger sum known as the "Jack Pot." His chance of winning, however, is nil.

The use or exploitation of any mechanical invention or contrivance like the slot machine known as "Jack Pot" to determine by chance the loser or winner of money or any representative value or of any valuable consideration of thing, is gambling, penalized by article 195 of the Revised Penal Code. In this connection, attention is invited to the following opinion of the Department of Justice regarding "Jack Pot" slot machines:

"By the weight of authority, the operation of slot machines * * * whereby small amounts are hazarded on the chance of winning a larger sum or value constitutes a lottery, regardless of the name by which they are called or the method of operating them * * * even though the player

* * * is assured of an ordinary return for his money, in addition to the chance of securing a prize.

* * * * *

"Neither would the circumstance that the slot machine is being operated under a municipal license, legalize the game. The license of an occupation which is illegal and criminal under the general law of the State is null and void. A license so issued is no defense against a prosecution under the Gambling Law." (II Dillon on Municipal Corporations, 5th ed., p. 965, fn. * * *; 10th Ind. Feb. 13, 1937, of the Undersecretary of Justice to the Secretary of the Interior; Opinions, Secretary of Justice, Vol. 1, 2nd Series, pp. 293-296.) The operation therefore of "Jock Pot" slot machines can not be legally permitted by the local authorities and therefore, it is hereby directed that immediate appropriate steps be taken to repeal all local ordinances or by-laws licensing or allowing the operation of "Jack Pot" slot machines within your respective jurisdictions, and to notify all operators thereof to stop forthwith the operation of said machines, with warning that they and those who play the game shall be subject to arrest and prosecution under the Gambling Law, if and when they continue to operate these slot machines after notice. To make effective this notification and warning the slot machine itself should be sealed at the point where operation makes it impossible without breaking the seal. The seal shall contain the following:

"This slot machine or "Jack Pot" is a gambling device. Playing hereon will subject the operator and the player to criminal prosecution. The breaking of this seal is evidence of the violation of this ordered.

"By order of the Secretary
of the Interior"

It is desired that the contents of this circular be forthwith transmitted to all law enforcement agencies under your respective jurisdictions for their information and guidance and be given the widest possible publicity.

Immediate report of action taken hereon is also desired.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER No. 28

March 4, 1950

DESIGNATING SPECIAL ATTORNEY PEDRO C. QUINTO IN THE OFFICE OF THE SOLICITOR GENERAL AS ACTING CITY ATTORNEY OF QUEZON CITY.

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Pedro C. Quinto, Special

Attorney in the Office of the Solicitor General, is hereby designated Acting City Attorney of Quezon City for the purpose of investigating and prosecuting the case against Elizabeth R. Wilson et al.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 29

March 9, 1950

SETTING ASIDE THE SUSPENSION OF JUSTICE OF THE PEACE FLORENTINO A. FLOR OF PARANG AND INDANAN, SULU.

In view of the dismissal of Criminal Case No. 300 of the Court of First Instance of Sulu against Mr. Florentino A. Flor, Justice of the Peace of Parang and Indanan, Sulu and upon recommendation of the District Judge, the order of the latter suspending Mr. Flor from office is hereby set aside. He may, therefore, resume his duties as such Justice of the Peace immediately upon receipt of notice hereof.

Payment of Mr. Flor's salary during the period of his suspension is hereby authorized.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 30

March 9, 1950

DETAILING JOSE M. ZAMBARRANO, SENIOR ASSISTANT PROVINCIAL FISCAL OF ILOILO, FOR TEMPORARY DUTY AS PROVINCIAL FISCAL OF MISAMIS OCCIDENTAL.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Jose M. Zambarano, Senior Assistant Provincial Fiscal of Iloilo, is hereby detailed for temporary duty to the Province of Misamis Occidental, there to discharge the duties of Provincial Fiscal, during the absence on special detail of the regular incumbent thereof to Surigao.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 31

March 13, 1950

AUTHORIZING JUDGE FIDEL IBANEZ OF THE EIGHTH JUDICIAL DISTRICT, LAGUNA, SECOND BRANCH, TO DECIDE IN MANILA CERTAIN CASES.

In the interest of the administration of justice and pursuant to the request of Hon. Fidel Ibañez, Judge of the Eighth Judicial District, Laguna, Second Branch, he is hereby authorized to decide in Manila from March 17 to 31, 1950, the following cases of the Court of First Instance of Laguna, the first five of which were previously tried by him while presiding over said court and the last one

which upon agreement of the parties was submitted to him for decision:

1. Civil case No. 8072, "Erlanger & Galinger, Inc., vs. Gil Exconde et al." for the recovery of possession and ownership of certain parcels of land.
2. Civil case No. 6249, "Erlanger & Galinger, Inc., vs. Gil Exconde et al." for the reconstitution of the records of said case, foreclosure of mortgage of the same properties involved in civil case No. 8072.
3. Land registration case No. 7, G.L.R.O. No. 244, "Gil Exconde et al., applicants, vs. Erlanger Galinger, Inc., oppositors" for the registration of some of the parcels of land involved in civil case No. 8072.
4. G.L.R.O. record No. 1201, lots 39 and 48. Petition of Erlanger & Galinger, Inc. in re-cancellation of transfer certificates of titles Nos. 9062 and 9089.
5. Civil case No. 7989, "Regino Relova et al., vs. Roberto Calo et al."
6. Civil case No. 7951, Regino Relova et al., vs. Tranquilino Calo et al."

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 32

March 13, 1950

DESIGNATING SENIOR ASSISTANT CITY FISCAL SOFRONIO DAGUAY ACTING CITY FISCAL OF ILOILO

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Sofronio Daguay, Senior Assistant City Fiscal of Iloilo, is hereby designated Acting City Fiscal of Iloilo City, effective March 16, 1950, to continue only during the absence on leave of Fiscal Filemon R. Consolacion.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 33

March 16, 1950

AUTHORIZING JUDGE-AT-LARGE DEMETRIO B. ENCARNACION TO HOLD COURT IN THE PROVINCE OF BULACAN.

In the interest of the administration of justice and upon agreement of the parties, the Honorable Demetrio B. Encarnacion, Judge-at-large, is hereby authorized to hold court in the Province of Bulacan on March 24, 1950 for the purpose of continuing with the trial of criminal case No. 1016 entitled, "People of the Philippines vs. Pedro Cabigao et als." and to enter final judgment therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 34

March 17, 1950

AUTHORIZING JUDGE FIDEL IBANEZ, TO DECIDE IN MANILA CERTAIN CASES

Administrative Order No. 31 of this Department, dated March 18, 1950, is hereby amended so as to read as follows:

In the interest of the administration of justice and pursuant to the request of Hon. Fidel Ibañez, Judge of the Eighth Judicial District, Laguna, Second Branch, he is hereby authorized to decide in Manila from April 1 to 20, 1950, the following cases of the Court of First Instance of Laguna, the first five of which were previously tried by him while presiding over said Court and the last one which upon agreement of the parties was submitted to him for decision:

1. Civil case No. 8072, "Erlanger & Galinger, Inc. vs. Gil Exconde et al." for the recovery of possession and ownership of certain parcel of land.
2. Civil case No. 6249, "Erlanger & Galinger, Inc. vs. Exconde et al." for the reconstitution of the records of said case, foreclosure of mortgage of the same properties involved in civil case No. 8072.
3. Land Registration Case No. 7, G.L.R.O. No. 244, "Gil Exconde et al., applicants vs. Erlanger & Galinger, Inc., oppositors" for the registration of some of the parcels of land involved in civil case No. 8072.
4. G.L.R.O. Record No. 1201, lots 39 and 48. Petition of Erlanger & Galinger, Inc. in re-cancellation of transfer certificates of titles Nos. 9062 and 9089.
5. Civil Case No. 7989, "Regino Relova et al. vs. Roberto Calo et al."
6. Civil Case No. 7951, "Regino Relova et al. vs. Tranquilino Calo et al."

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 35

March 22, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950, CONCERNING ASSIGNMENT OF VACATION JUDGES.

Administrative Order No. 12 of this Department, dated January 30, 1950, is hereby amended insofar as the assignment of vacation judges during the months of April and May, 1950, for the following provinces is concerned:

For the Provinces of Pangasinan and Zambales, District Judges Segundo Martinez for Iba during April, and Lingayen during May; Antonio G. Lucero (Tayug) for April; Eulogio de Guzman (Dagupan) for April, and Judge-at-Large Luis Ortega (Lin-

gayen) for April, and (Lingayen, Dagupan and Tayug) during May;

For the Province of Bulacan, District Judges Bonifacio Isip for April, and Francisco Jose for May only;

For the Province of Camarines Sur, District Judge Perfecto Palacio for April, and Judge-at-Large Jose N. Leuterio, for May only; and

For the Provinces of Oriental Misamis and Bukidnon, District Judge Primitivo L. Gonzales, and for the Province of Lanao, District Judge Ramon O. Nolasco.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 36

March 28, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950, CONCERNING ASSIGNMENT OF VACATION JUDGES IN THE PROVINCE OF BOHOL.

Administrative Order No. 12 of this Department dated January 30, 1950, is hereby amended insofar as the assignment of Vacation Judges for the Province of Bohol during the months of April and May, 1950 is concerned, as follows:

For the Province of Bohol, District Judge Jose P. Veluz for April only; and Cadastral Judge Jose Querubin for April and May.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 37

March 29, 1950

DESIGNATING TEMPORARILY JUDGE-AT-LARGE FELICISIMO OCAMPO TO ACT AS MEMBER OF THE ELEVENTH GUERRILLA AMNESTY COMMISSION IN LIEU OF JUDGE VICENTE VARELA.

Pursuant to the provisions of Administrative Order No. 11 of His Excellency, the President of the Philippines, and in view of the sickness of Judge Vicente Varela, Member of the Eleventh Guerrilla Amnesty Commission, Judge-at-Large Feliciano Ocampo is hereby designated to act as member of the said commission in lieu of Judge Varela during the session of the commission in Dumaguete to try criminal cases Nos. 4073 and 4074, entitled "People vs. Toribio Trasmonte, et al." for murder, and crimi-

nal case No. 4607 vs. Estanislao Cabrera for murder.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 38

March 30, 1950

AUTHORIZING JUDGE CEFERINO DE LOS SANTOS TO CONTINUE HOLDING COURT IN QUEZON CITY

In the interest of the administrative of justice and pursuant to the request of the Honorable Ceferino de los Santos, Judge of the 7th Judicial District, Rizal, 3rd Branch, he is hereby authorized to continue holding court in Quezon City from April 1 to 15, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 40

March 30, 1950

AUTHORIZING JUDGE JOSE TEODORO, SR. TO CONTINUE THE TRIAL OF A CERTAIN CASE IN NEGROS OCCIDENTAL.

In the interest of the administration of justice and upon request of the Honorable Jose Teodoro, Sr., Judge of the 12th Judicial District, Negros Occidental, 2nd Branch, he is hereby authorized to continue the trial of criminal case No. 2442 entitled "People vs. Maximino Daing" on April 10, 1950 and succeeding dates until the termination of the trial of said case, and to enter final judgment therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 41

March 31, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950, CONCERNING ASSIGNMENT OF VACATION JUDGES FOR THE PROVINCE OF DAVAO.

Administrative Order No. 12 of this Department, dated January 30, 1950, is hereby amended insofar as the assignment of Vacation Judges for the Province of Davao during the months of April and May, 1950 is concerned, as follows:

For the Province of Davao, District Judge Enrique Fernandez and Cadastral Judge Cirilo Maceren.

RICARDO NEPOMUCENO
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments confirmed by the Commission on Appointments on February 28, 1950:

DEPARTMENT OF FOREIGN AFFAIRS

Maynardo Farol as Consul General; Tagakotta O. Sotto and Vicente L. Pastrana as Consuls; Mariano A. Joven and Alvero Barreto as Vice-Consuls.

DEPARTMENT OF THE INTERIOR

Datu Mandagan Dimakuta, Provincial Governor of Lanao; Datu Duma Sinsuat, Provincial Governor of Cotabato; Hon. Marcos Reseña, Provincial Governor of Bukidnon; Dominador Jover, Vice-Mayor of Iloilo City.

DEPARTMENT OF FINANCE

Sixto B. Ortiz, Treasurer, and Vicente Gella, Assistant Treasurer of the Philippines; Ildefonso D. Jimenez, Provincial Treasurer of Iloilo; Ubaldo D. Laya, Provincial Treasurer of Misamis Oriental; Pedro Encarnacion, Provincial Treasurer of Negros Occidental.

Hadji Urang Naga, Provincial Assessor of Lanao; Lazaro Francisco, Provincial Assessor of Nueva Ecija; Moises D. Romero, City Assessor of Quezon City.

H. Pascual, Chairman, and Carlos de Leon and Jose Batungbacal, Members of the Board of Tax Appeals of Bataan; Loreto Delgado, Member of the Board of Tax Appeals of Palawan.

COMMISSION ON ELECTIONS

Hon. Rodrigo D. Perez, Member of the Commission on Elections for a term expiring November 24, 1958.

UNIVERSITY OF THE PHILIPPINES

Aurelio Montinola, Member of the Board of Regents for a term expiring August 31, 1956.

NATIONAL ABACA AND OTHER FIBERS CORPORATION
Vicente C. Aldaba, Chairman of the Board of Directors for a term expiring February 19, 1951.

NATIONAL TOBACCO CORPORATION

Bienvenido Valera, Member of the Board of Directors for a term expiring August 31, 1953.

Ad interim appointments confirmed by the Commission on Appointments on March 10, 1950:

DEPARTMENT OF FOREIGN AFFAIRS

Hon. Miguel Cuaderno, Sr., Governor of the International Monetary Fund and the International Bank for Reconstruction and Development for a term ending August 31, 1951; Hon. Emilio Abello, alternate in the Board of Governors of the Interna-

tional Monetary Fund and the International Bank for Reconstruction and Development for a term ending August 31, 1951.

DEPARTMENT OF THE INTERIOR

Hon. Ignacio Santos Diaz, Mayor, and Claro Pinga, Member of the City Council of Quezon City; Lt. Col. Manuel D. Jaldon, Mayor of Zamboanga City; Emilio Ejercito, City Public Service Officer, and Jose M. Chico, Assistant City Public Service Officer of Manila; Pedro S. Najarro, Assistant Chief of Police of Cebu City.

Pilar Hidalgo Lim and Pedro Tan, Members of the Board of Review for Moving Pictures for a term expiring February 16, 1950, and October 22, 1952, respectively.

DEPARTMENT OF JUSTICE

Fernando Cruz, Provincial Fiscal of Bulacan; Josefa G. Garcia, Justice of the Peace of Talavera, Nueva Ecija.

DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

Anastacio Agan, City Engineer of Quezon City.

REHABILITATION FINANCE CORPORATION

Pablo Lorenzo, Member of the Board of Governors for a term expiring December 16, 1956.

DEPARTMENT OF FINANCE

Provincial Treasurers: Ponciano Reyna, Antique; Pascual Caoile, Misamis Occidental; Jose L. Recio, Romblon; Aquilino Calixto, Assistant City Treasurer of Manila.

Ad interim appointments confirmed by the Commission on Appointments on March 16, 1950:

DEPARTMENT OF THE INTERIOR

Hon. Marciano E. Brion, Mayor, and Marcial Alimario, Councilor of the City of San Pablo.

Matilde de los Santos, Florencio Diomangay, Flavio D. Quiño, Pablo Macabidang, Victor Doroja, Rufino Pido, Petronilo Pallones and Francisco Miano, Members of the Municipal Board of the City of Calbayog.

Ignacio T. Cui, Chief of the Fire Department of the City of Calbayog.

DEPARTMENT OF FINANCE

Gorgonio Valledor, Chairman of the Board of Tax Appeals of Camarines Sur; Jesus Iriarte, Chairman of the Board of Tax Appeals of Misamis Oriental; Marcos Morelos, Chairman of the Board of Tax Appeals of the City of Cebu; Vicente T. Argente, Chairman of the Board of Tax Appeals of Rizal City.

DEPARTMENT OF JUSTICE

Hon. Sabino Padilla and Hon. Luis P. Torres, Associate Justices of the Supreme Court.

Hon. Fernando Jugo, Presiding Justice, and Hon. Buenaventura Ocampo, Associate Justice of the Court of Appeals.

Hon. Manuel M. Mejia, Cadastral Judge of First Instance.

NATIONAL ECONOMIC COUNCIL

Hermenegildo B. Reyes, Member while being Economic Administrator, and Gil J. Puyat, Jose Cojuangco, Felipe Buencamino, Jr., Conrado Benitez, and Pablo Lorenzo, Members of the National Economic Council for a term ending on December 31, 1950.

Ad interim appointments confirmed by the Commission on Appointments on March 21, 1950:

DEPARTMENT OF THE INTERIOR

Placido Ramos and Luis Villaceran, Members of the Municipal Board of the City of Manila.

Hon. Pedro D. Pido, Mayor of the City of Calbayog.

Joventino S. Prado, Member of the Municipal Board of the City of Naga.

Juan Estrada, Member of the City Council of Basilan City.

Jose Ramirez, Chief of the Fire Department of the City of Legaspi.

DEPARTMENT OF FINANCE

Sixto B. Ortiz, Chairman of the Emergency Currency Board.

Pedro Elizalde, Provincial Treasurer of Cebu.

Raymundo Fabi, City Treasurer of Tagaytay City.

Restituto N. Ascaño, Apolinario Sugueco, Cecilio Chuapoco and Crisanto Mauricio, Members of the Board of Tax Appeals of Rizal City.

DEPARTMENT OF JUSTICE

Hon. Luis N. de Leon, Cadastral Judge.

Hon. Natividad Almeda Lopez, Presiding Judge of the Municipal Court of Manila.

Antonio Torres, Solicitor in the Office of the Solicitor General.

Hon. Eugenio Angeles, City Fiscal of Manila.

Hermogenes Concepcion, Jr., Melanio Andal, Manases O. Reyes, Luis B. Angeles, Arsenio Alcantara, Pedro Ma. Sison, Jose Solidum, Antonio Ysip and Avelino Concepcion, Assistant Fiscals of Manila.

Honorio P. Reyes, Assistant Provincial Fiscal of Cagayan; Medardo Conde, Assistant Provincial Fiscal of Cebu; Nazario Paquiao, Third Assistant Fiscal of Cebu City; Jose Montecarlo, Second Assistant Fiscal of the City of Iloilo; Alejandro Ecarma, Third Assistant Fiscal of the City of Cebu.

Manuel Deaño, Justice of the Peace of Tamparan, Mulundo, Taraka, Masiu, Maging and Gata, Lanao; Napoleon Dejoras, Justice of the Peace of Tugaya, Uato, and Marantao, Lanao; Macario De-

mate, Justice of the Peace of Lala and Baroy, Lanao.

Jesus Almirante, Justice of the Peace of San Remigio, Cebu; Brigido Genebraldo, Justice of the Peace of Digos, Davao; Virgilio Llanto, Justice of the Peace of Governor Generoso, Davao; Mariano Tuason, Justice of the Peace of Maluko, Malitbog, and Libona, Bukidnon; Simplicio J. Apao, Justice of the Peace of Sinacaban, Misamis Occidental; Pedro Cuena, Justice of the Peace of Padada, Davao.

NATIONAL DEVELOPMENT COMPANY

Jose P. Fernandez, Member of the Board of Directors for a term expiring June 30, 1952.

NATIONAL AIRPORTS CORPORATION

Hon. Carlos Ledesma, Member of the Board of Directors for a term expiring August 6, 1953.

NATIONAL POWER BOARD

Vidal Tan and Felicisimo Santiago, Members of the National Power Board for terms expiring June 30, 1952.

METROPOLITAN WATER DISTRICT BOARD

Hon. Sixto Antonio, Member of the Metropolitan Water District Board for a term expiring June 30, 1952.

Ad interim appointments confirmed by the Commission on Appointments on March 28, 1950:

DEPARTMENT OF FINANCE

Melecio Palma, Provincial Treasurer of La Union.

Fernando T. Fuentes, Provincial Treasurer of Palawan.

Maximo Lago, Vitaliano Jimenez, Severo Banci and Teofilo Canastrra, Members of the Board of Tax Appeals of Ozamis City.

DEPARTMENT OF HEALTH

Dr. Candido F. Garcia, City Health Officer of the City of Legaspi.

NATIONAL ECONOMIC COUNCIL

H. B. Reyes, Member of the National Economic Council.

GOVERNMENT ENTERPRISES COUNCIL

H. B. Reyes, Member of the Government Enterprises Council.

UNIVERSITY OF THE PHILIPPINES

Aurelio Periquet, Member of the Board of Regents for a term expiring August 31, 1956.

MUNICIPAL OFFICIALS

Albay—

Bibiana Mendiola de Nayve, Councilor of Camalig, Albay, March 17, 1950.

Batangas—

Apolonio Marasigan, Councilor of San Juan, Batangas, March 30, 1950.

Esteban Banaira, Councilor of Tayasan, Batangas, March 30, 1950.

Bohol—

Leopoldo Blanco, Mayor, and Aurelio Maglajos, Vice-Mayor of San Jacinto, Bohol, March 28, 1950.

Cesario Ugat, Vice-Mayor, and Ciriaco Darunday, Councilor of Baclayon, Bohol, March 28, 1950.

Cagayan—

Francisco Pizarro, Vice-Mayor of Lallo, Cagayan, March 17, 1950.

Capiz—

Pacifico K. Dagohoy, Councilor of Buruanga, Capiz, March 8, 1950.

Cebu—

Nicolas Delago, Councilor of Naga, Cebu, March 17, 1950.

Davao—

Teodoro Panuncialman, Mayor of Lupon, Davao, March 8, 1950.

Severino Magallano, Mayor, and Francisco Villa-fuerte and Gualberto Revita, Councilors of Saug, Davao, March 10, 1950.

Mateo I. Rodis, Councilor of Digos, Davao, March 10, 1950.

Ilocos Sur—

Dalmacio Pascua, Councilor of Candon, Ilocos Sur, March 17, 1950.

Iloilo—

Cornelio Quidato, Councilor of Santa Barbara, Iloilo, March 9, 1950.

Laguna—

Ponciano Sanchez, Vice-Mayor of Pakil, Laguna, March 8, 1950.

Leyte—

Felisa A. Mirallos, Councilor of Jaro, Leyte, March 8, 1950.

Quirino Umpad, Councilor of Villaba, Leyte, March 9, 1950.

La Union—

Eliodoro Garcia and Jose Ladines, Councilors of Agoo, La Union, March 15, 1950.

Marinduque—

Santiago Pandez, Councilor of Sta. Cruz, Marinduque, March 17, 1950.

Masbate—

Francisco Campo, Councilor of Baleno, Masbate, March 9, 1950.

Mindoro—

Felipe Manalo, Councilor of Bongabon, Mindoro, March 23, 1950.

Pampanga—

Marcelino Magalona, Vice-Mayor of Masantol, Pampanga, March 8, 1950.

Dr. Pedro Bautista, Vice-Mayor, and Ambrosio Yambao, Councilor of Masantol, Pampanga, March 17, 1950.

Pangasinan—

Santiago Alarcio, Councilor of Manaoag, Pangasinan, March 8, 1950.

Francisco Casaña, Councilor of Anda, Pangasinan, March 9, 1950.

Domingo Ancheta, Councilor of Sual, Pangasinan, March 10, 1950.

Quezon—

Timoteo Valencia, Vice-Mayor of Tagkawayan, Quezon, March 8, 1950.

Aquilino Morga, Mayor of Burdeos, Quezon, March 23, 1950.

Jose Carinpong, Nazario Nagar, Marcelino Lopez, and Jose Vasquez, Councilors of Tagkawayan, Quezon, March 23, 1950.

Rizal—

Arsenio Fernando, Councilor of Teresa, Rizal, March 8, 1950.

Romblon—

Juan A. Recto, Councilor of San Fernando, Romblon, March 8, 1950.

Feliciano Gutierrez, Vice-Mayor of Santa Fe, Romblon, March 30, 1950.

Pedro Mallen, Councilor of Magdiwang, Romblon, March 30, 1950.

Fermin Dalisay, Councilor of Looc, Romblon, March 30, 1950.

Ignacio Molina, Councilor of Romblon, Romblon, March 30, 1950.

Tomas G. Ramilo and Martin Rabino, Councilors of Cajidiocan, Romblon, March 30, 1950.

Samar—

Valeriano Nabong, Vice-Mayor, and Filemon Se-villana, Councilor of Pinabacdao, Samar, March 17, 1950.

Hilarion Felicen, Councilor of Salcedo, Samar, March 30, 1950.

Zamboanga—

Dr. Jose Hofeliña, Councilor of Pagadian, Zamboanga, March 8, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Message of His Excellency, the President of the Philippines, to the Third National Congress and the Second Annual Convention of the National Federation of Sugar-Cane Planters, held at Bacolod City, March 7, 1950: [Read by PNB Vice-President J. D. Quintos]

Gentlemen of the Convention:

I am happy to greet the delegates to the Third National Congress and the Second Annual Convention of the National Federation of Sugar Cane Planters. I would have wanted to appear before you personally today, knowing as I do the importance of this gathering and the vital problems that will be discussed in the course of your deliberations. I regret, however, that the condition of my health has not permitted me to do so.

As you know, one of the principal objectives of my administration is to gear all the elements of the country to a program of total economic mobilization. More than ever, it is essential that our export-producing industries be brought to maximum production. While the sugar industry has grown by leaps and bounds since liberation, it has yet a long way to go before reaching its commanding position in our economy during the pre-war years.

Shortly after my assumption of office as President in 1948, I created the Sugar Rehabilitation and Readjustment Commission to advise me on the problems of the industry. Since then I have given every possible incentive and assistance, financial and otherwise, in bringing the industry to the level at least of its pre-war production.

I am informed, however, that the industry will be able to fill hardly 60 per cent of our export quota to the United States. At present prices, this means that we will be unable to take full advantage of the privilege of free entry in the United States. This will mean a loss to us of approximately \$45,000,000. I am also informed that the capacity of the sugar mills today is more than sufficient to take care of our pre-war production, and that the deficiency is due to the insufficient amount of cane that is being produced. This, in turn, is due mostly not only to the disorders obtaining in certain sections of Luzon but, until recently, to fear among some planters in this premier province in sugar production. It is my earnest endeavor to remove the causes of that fear.

While the Government is now engaged in an all-out offensive against the dissidents, we are at the same time trying to find a way whereby unfilled cane quotas may be produced in other areas. I am in high hopes that we shall be able to do this by legal means beginning with the 1951-1952 crop.

In order to maintain the industry in a thriving condition, however, we must reduce our cost of production both in the factory and in the field. Factory costs can be reduced by increased cane supply, and the cane supply must come from increased yields per hectare rather than from the planting of additional areas. With the financial help of the PRATRA, the Sugar Rehabilitation and Readjustment Commission has started a new experimental station where improved cane culture will be practised through the use of machinery and the selection of high-yielding cane varieties. These activities, I am sure, will be of the greatest help to all the planters, just as they have proved to be in Hawaii where the largest production per hectare in the world is now being obtained.

As to financing, the government banks and financial institutions have granted loans to the extent of around one hundred million pesos to the sugar industry in the form of agricultural loans and crop loans, as well as rehabilitation loans. I have just asked the Philippine National Bank to consider the proposals presented to me the other day by a committee headed by Governor Lacson to ease up the obligations of the planters in connection with their crop loans. I mean to continue giving all the financial aid necessary, provided proper information is furnished and adequate plans are presented to the appropriate agencies of the Government. I am informed, however, that although the Sugar Commission has passed circulars to interested parties requesting information on their needs for rehabilitation, only meager information, if at all, has so far been received.

I must warn you all to look into the living conditions of your workers. You must know by now that an insidious attempt is being made to convert our working people to doctrines that are inimical to our democratic way of life. Discontent among our masses provides a fertile field for such a movement. You must anticipate this danger and apply the remedy before it actually strikes your farms. While conditions in different localities may require different remedies, the basic condition for the proper treatment of our workers is still social justice and economic security.

The Government will give every necessary support to the sugar industry and will welcome and give serious consideration to all suggestions coming from you calculated to enhance its prosperity.

I congratulate you all for your initiative in holding this convention, and wish you success in your deliberations.

Seventeenth Radio Chat of President Elpidio Quirino, delivered at
the Guest House over nationwide hookup, March 15, 1950:

My Fellow Countrymen:

I am addressing you this time from the mountain city of Baguio. It really does not matter where my voice comes from in order to reach the farthest corners of the Archipelago. The main thing is that I must reach you in an effort to acquaint you with present world conditions and our position relative to them.

Since we became independent in 1946, we have given the closest attention to our obligations as member of the international community. We have tried hard to achieve recognition for our Republic in this field and I think we have succeeded in our efforts. It may truthfully be said that, in the eyes of the civilized countries today, including the most powerful, the Philippines has won a respected place in the concert of free and sovereign states.

Our country is in the midst of a region which at this moment has become the focal point of international tension. During the last three decades following the first world war, the peoples of the world have been constantly besieged by the fear of war. Though the center of the conflict and fury was quite far from our region in the beginning, it kept advancing upon us steadily like a prairie fire, until we became involved in the conflagration of the second world war which devastated our country. We were caught practically unaware, and we underwent such suffering as we had never before experienced in our centuries of struggle for liberty. This explains why it is only in recent years that we have become seriously concerned about our stability and more conscious of our own responsibility for the maintenance of peace. Danger has come close again, our own national security is threatened, and our capacity for survival is being put to a severe test.

We now realize that we have a role to play in the prevention of war, principally because our region has become the new theatre of possible conflict. Asia is in the throes of political convulsion and our country lies close, very close indeed, to the center of disturbance. We find ourselves at the crossfire of embattled ideologies. Because we have chosen democracy as our way of life, our country has become a natural bridge between the east and the west as well as a vital outpost of freedom in the populous hinterland of Asia.

In our desire to play our role well, we conceived the idea of total economic mobilization, convinced that only thus can we secure for our people a life of substance and contentment that would raise living standards beyond reach of those who capitalize on human misery and suffering to further ends inimical to our chosen way of life. Our economic and security problems are not peculiar to us. We share them with all our neighbors. During the last three months, several measures have been taken to solve these problems.

Late last year, under the inspiration of President Truman's Point 4, the United Nations approved a program of technical assistance for underdeveloped areas. This would enable many countries of Asia, Africa, and Latin America to benefit from the technical know-how of the more advanced countries and assist them in raising their standard of living. By methods of self-help and mutual help, these countries are expected to save themselves in time from the menace of subversive ideas. Studies are being made of a plan to constitute the Philippines into a demonstration area for this program, as envisaged by President Truman. Our country may thus be used as testing-ground for the effectiveness of economic measures to strengthen these nations against social threats from without.

On the political level, the members of the British Commonwealth recently met in Ceylon to thresh out problems of common concern. Soon afterwards, representatives of the State Department and American diplomatic envoys in Southeast Asia held secret meetings in Bangkok to re-examine United States policy in the face of the changed and changing political situation in the region. At the same time, the United States joint chiefs of staff met with General MacArthur in Tokyo presumably to review the whole strategic situation in the western Pacific as a result of the debacle in China. It is apparent that there is now taking place a careful readjustment of the objectives of United States diplomacy and military strategy in our part of the world. Furthermore, we observed that every attempt is being made to harmonize the American and the British views on the critical situation in Southeast Asia, in order that a program of common action may be undertaken to resolve it.

We are, I wish to repeat, a vital factor in this program of planning and action. On this subject I need say no more than to assure you that our Government is fully, awake to its responsibilities. Careful preparations are being made to insure our cooperation in any move that may be taken, consistent with the means at our disposal, our existing obligations and our national interests. At the same time, everything humanly possible is being done not only to strengthen our national security but also to promote friendly relations between ourselves and other countries.

I have reviewed recent development in foreign affairs which are of direct concern to us in order to set at rest any misgivings which you may have on this score. It is proper that our people should give careful thought to this aspect of our program of national action, for no problem can be of greater concern to you than our survival as a free nation secure within its boundaries. Yet, in a certain sense, the subject of foreign affairs is somewhat removed from the immediate interest of the individual citizen.

Therefore, I would like to speak to you on the problem of war and security from a more intimate angle.

You hear a lot of talk nowadays about the danger of a new war with atomic bombs, hydrogen bombs and other weapons of mass extermination. You are reminded of the dangerous position we would occupy in the event of such a conflict. You hear also of the menace of a Communist invasion from across the seas.

While many question their existence as real or imminent dangers, we must, of course, recognize them. Having recognized them, our next duty is to cooperate with other nations to prevent them. This we are doing within the limits of our capacity. But there is a field close at hand on which we all can work. There are certain things we all can do, every citizen doing the job that is nearest to him.

While I invite you to cast your eyes beyond our border, I must also ask you to fix your eyes within. By "within" I mean not only within our national border and in our respective communities but also in our homes and within our hearts. More perilous than any war outside is the war which we must wage within ourselves. More decisive than any battle with an invading enemy is the battle that we must fight against the evil within ourselves.

For, of what use is the struggle we shall wage against the outside foe if we shall already have lost the struggle against the enemy within our hearts and minds? It will be like locking the door of the stable after the horse has been stolen. Security becomes meaningless. External defense becomes futile. We cannot save ourselves from destruction by the enemy unless, first of all, we have saved ourselves from the corrosive forces within our midst and within our souls.

Our enemies within are three: complacency, defeatism, and despair. To combat these enemies, we must bestir ourselves, morally and physically—morally, by acquiring the spiritual disciplines of civic duty and national unity, and physically, by engaging in every useful and productive enterprise in order to provide for every family food, clothing and shelter in an atmosphere of peace that inspires internal security.

My countrymen: Let us never forget the two bitter lessons which we have learned at such great cost: first, that freedom is not a gift bestowed upon us but a reward which we must win by positive effort; and second, that we should rely for our security more upon our internal defenses than upon military armaments.

Stronger, in the end, than any treaties of alliance or military armaments is the system of our internal defenses resting upon the civic consciousness of the individual citizen and the spirit of national unity which binds us together

as one. With this consciousness and this spirit, our defensive measures are strengthened a hundredfold; without them, no defenses of any kind will ever be good enough to protect us from external enemies.

We must build our front-line trenches in our communities, in our homes, in our hearts. Here is where we must make our stand against the really dangerous enemies of our country and our people. If we leave this front undefended, we are lost. For, like the "anay" the enemy bores secretly from within, a kind of spiritual "fifth column." Once the national fibre is weakened, we are ripe for destruction.

But so long as we hold the virtues of personal integrity and love of fellowmen, nothing can harm us. We must never say, "So long as I am left alone at peace and security, my neighbors should take care of themselves," for somehow, sometime, the danger to your next-door friend may eventually reach you—when it will be too late to defend yourself. So we must always be mindful of the welfare and security of the whole community. Never in our whole history as a nation has this civic duty become more imperative than at this stage of our development. So long as we make every Filipino home an arsenal of contentment and plenty and a citadel of peace and security, our nation is impregnable. Therefore, I say again that our strongest bulwarks against danger lie in the stout hearts of our people and in every home where dwell the spirit of loyalty and affection, and where generate a sense of civic duty and a feeling of security. Let this be our guide and motto from this day onward.

Good night.

Address of His Excellency, President Elpidio Quirino, at the opening day of the 11th biennial convention and 29th anniversary of the National Federation of Women's Clubs of the Philippines at the Escoda Memorial, March 31, 1950 [Read by Executive Secretary Teodoro Evangelista]:

I regret that I am unable to be with you on the opening day of the 11th biennial convention and 29th anniversary of the National Federation of Women's Clubs of the Philippines. I regret it all the more because I am fully aware not only of the importance of this occasion but the vital role which this organization has played and will continue to play in the promotion of our nation's welfare.

This organization occupies a warm spot in the hearts of the Filipino people. During the past three decades it has established itself in a pre-eminent position in the field of community service and social welfare. It has created a network of affiliated clubs throughout the length and breadth of the Archipelago which, in the hands of an alert and skillful leadership, has become a weapon of

great efficacy in developing a strong civic spirit and a sense of national unity among our people.

Our nation today is passing through a grave crisis. It is well for our people to realize that this crisis, arising from both material and spiritual causes, will require the closest cooperation between the people and their government to solve. This crisis has manifested itself in the shape of three major problems: the problem of peace and order, the problem of food production and total economic mobilization, and the problem of developing a new sense of honesty and integrity among all our people whether inside or outside the Government.

As head of the present administration I wish to pledge to you the unceasing and relentless effort of the Government to solve this three-fold problem vigorously, speedily and without fear or favor. Plans are afoot by which the Government hopes to bring a greater measure of peace and security throughout the land in the shortest possible time and without giving quarter to the lawless elements that are disturbing the national tranquility. We have initiated and are following up a program of economic development calculated to make our country self-sufficient in food supply and to increase our production of export commodities at least to pre-war levels if not beyond. Finally, the Government has embarked upon a policy of cleaning up graft and corruption, dishonesty and abuse, inefficiency and waste in our body politic.

I give you every assurance that my administration, in cooperation with the other branches of the Government, will prosecute these policies relentlessly until our goals are achieved.

At the same time, our people must be reminded that the Government is not omnipotent, that it cannot do all these things by its own efforts unaided by the masses of our people. The Government is merely the political organ for the execution of the popular will, and the potency and effectiveness of its efforts must depend ultimately on the degree of cooperation which the people vouchsafe to it.

Therefore, in a very real sense, it may be said that the responsibility for solving the present national crisis rests equally upon the Government and upon the people themselves. I have no doubt that our people desire nothing more fervently than the three goals which I have just stated; namely, peace and order, economic security, and moral regeneration. The good society rests upon these three pillars and I am sure that I interpret our people's desires correctly when I place these three objectives at the head of our national program.

Since we are agreed that these are our three major problems, I beseech you to give us your light and to lend us your strength towards their effective and speedy solution.

As we buckle down to this great task we should do well to indulge in a bit of self-criticism. The solution of our problems presupposes a capacity for positive action. Positive action, in turn, requires that we rid ourselves of three vices; namely, the vice of complacency by which some people are prone to accept existing evils in the hope that everything will turn out right in the end; the vice of "letting George do it," by which some people, while recognizing the existence of evils, yet refuse to do anything about such evils themselves because they expect other men to do the job; and the vice of "niñgas cogon," by which some people are moved to action by a short-lived reformatory zeal which dies out almost as soon as it is born.

I, for one, do not accept the theory that these traits are inherent in our people. We all have seen how our nation has passed with flying colors the test of blood and fire during the war and the occupation. The story of those tragic years is not a story of complacency, lethargy, and short-lived enthusiasm. It is a story, rather, of courage, aspiration and determination under seemingly insuperable odds. Our people have shown these qualities in every crisis of their history, and I am sure they have it in them to show these qualities again in the face of the serious problems that confront us.

The community service and social welfare organizations have a special responsibility in arousing and directing the energies of our people towards the solution of these problems. I look upon them as the loyal partners of the Government in the successful execution of our national program. I look with special interest and enthusiasm upon the efforts of the National Federation of Women's Clubs of the Philippines to accomplish its share of this program. We have a right to expect that this organization of Filipino women, which draws its huge membership from every class of our society and from every nook and corner of the Archipelago, will evolve its own program of social action on a nation-wide scale which shall reinforce and support the efforts of the Government in this field.

You, my friends, have labored with us in the service of our people for nearly thirty years. You have developed a tradition of loyal service that has earned for your organization a special place of honor in the affections of our people. I take this opportunity to congratulate you most warmly on your past achievements and to call upon you to face with courage and enthusiasm the grave tasks which await to be done today and tomorrow.

DECISIONS OF THE SUPREME COURT

[No. L-1291. November 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
EUGENIO ESCOSURA, defendant and appellant

1. CRIMINAL LAW; TREASON; EVIDENCE; CONTRADICTIONS IN WITNESSES' TESTIMONIES AND LAPSE OF TIME, EFFECT UPON CREDIBILITY.—The contradictions pointed out in the witnesses' statements are not of the nature that would tend to impair their credibility. They were details which, in the confusions, excitement and fright the horrible incidents brought about, could very well have impressed the witnesses in different manners or escaped the attention of some but not of the others. The long time that had elapsed is another important factor that has to be considered. Far from being evidence of falsehood, these contradictions constitute a demonstration of good faith and a confirmation of the truth of the appellant's participation.
2. ID.; ID.; ID.; IMPEACHMENT OF WITNESS BY PRIOR INCONSISTENT TESTIMONY; LAYING A PREDICATE.—The statements in the other case can not serve as basis for impeaching the witnesses' veracity unless their attention was directed to the discrepancies and they were given an opportunity to explain them. This has not been done.
3. ID.; ID.; ID.; ADHERENCE TO THE ENEMY; TWO-WITNESS RULE.—Adherence, as differing from overt act, does not have to be substantiated by the oaths of two eye-witnesses.
4. ID.; WORDS AND PHRASES; "SCOUT BATTALION."—A semi-military armed force called "Scout Battalion," the main purpose of which was to aid the enemy in suppressing and fighting the resistance movement. It was an organization supplied by the Japanese with uniforms, food and weapons, and which actively cooperated with the invaders in the apprehension, torture and assassination of guerrillas or suspected guerrillas.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Lastrilla & Alidio for appellant.

First Assistant Solicitor General Roberto A. Gianzon and
Solicitor Luis R. Feria for appellee.

TUAZON, J.:

Charged with treason on six counts, the appellant was found guilty on counts 1 and 2, and sentenced to *reclusión perpetua*, with the accessories provided by law, to pay a fine of ₱10,000, and the costs.

On count one, Jose de Castro, municipal policeman of Sta. Rosa, Laguna, testified that at about two o'clock in the afternoon of October 8, 1943, Japanese soldiers accompanied by Filipinos appeared all of a sudden at the municipal building and arrested the witness and six other policemen. There were about eight Filipinos who came with the Japanese and one of them was the accused Escosura. Some of the Filipinos were armed, including the

defendant who was carrying a rifle. The policemen were loaded in a truck and taken to the Japanese garrison in Calamba. There the prisoners were questioned regarding their activities as guerrillas. At one time, they were made to dig holes by the Japanese in which supposedly they were to be buried. After forty-one days of detention, they were set free. That was not the only time the witness saw Escosura with Japanese. He had seen him with Japanese soldiers on many other occasions also carrying arms. Escosura and the other Filipinos with him were makapilis. They used as headquarters Arsenio Batitis's house in barrio Aplaya, Sta. Rosa.

Adolfo Bascon, one of the other policemen arrested with De Castro, corroborated the latter. He added that he was questioned by a Japanese officer with a Japanese interpreter. Later he was questioned by a Japanese officer and Arsenio Batitis. All in all, he was subjected to questioning about five different times. He contradicted De Castro when he testified that Arsenio Batitis, Eugenio Escosura, Rafael Batitis and Victorio Gardoce came along to Calamba in the truck. The accused and other Filipinos, he said, were makapilis because they wore Japanese uniform and bore arms.

On the second count, Candelaria M. Santos testified substantially as follows:

Her husband, Major Leopoldo Santos, was arrested on November 16, 1944, at about three o'clock in the morning, in their house in barrio Pooc, municipality of Sta. Rosa, by Japanese troops accompanied by Filipinos one of whom was the accused. At that time, her husband was asleep and she woke him up. Two Japanese broke into the house through the window. Others followed the two Japanese and they searched the house for her husband. The Filipinos and other Japanese came into the house through the door which she had opened. Some of the Filipinos were in Japanese uniform and others in civilian attire. The accused was carrying a pistol. In the house, she saw the accused going about the room while she was guarded by Japanese and could not move. Her husband had locked himself up in a room and she did not know what he did until he called her from an avocado tree, which was about three meters from the house. Evidently, he had jumped out of the house through the window. Her husband called her to put trousers on him. He was naked from the waist down. She asked permission of the Japanese to dress her husband and they granted it. Her husband was wounded in several parts of the body with bayonet stabs and was profusely bleeding. When she dressed him his hands were already tied. It was Filipinos who bound him. Once he was tied, he was taken to the truck which was parked in front of the house, at the gate. She did not see her hus-

band until June 27, 1945, when his remains were exhumed. Her husband was suspected of being the founder of an underground organization in Sta. Rosa. He was a lieutenant-colonel in the guerrilla organization, having been promoted in March, 1942, but he was still called major, the rank he had in the Philippine Army.

Pablo Alumno testified that he was a neighbor of Major Leopoldo Santos. At about two o'clock in the morning of November 16, 1944, he went home from a neighboring house where he had been conducting mahjong games and where Major Santos had played up to that hour since noon of the previous day. On reaching home, he smoked a cigarette, after which he saw a truck pull up right beside Major Santos' house. He peered through a window and saw a man leading a group of other men. He slipped down and watched from behind a gumamela shrub. At the gate of Major Santos' house, he saw the accused with other Filipinos whom he named. Two Japanese were left behind while Escosura led the rest to the house. When they reached the door, they knocked and called, "Major, Major." The door was opened and they entered. Then he saw Major Santos jump out of the window and climb up an avocado tree. The raiders came down the house, went around it and then toward the tree where Major Santos was hiding. Then he heard Major Santos shout in pain and saw him fall to the ground. The victim was tied and carried to the street by two men. These did not pass through the gate but broke part of the fence. The place was lighted with a 50-kilowatt electric bulb. He was about ten meters from the fence where those who carried Major Santos passed and saw Eugenio Escosura holding a rifle with fixed bayonet.

The defendant testifying in his behalf denied all the acts imputed to him by the witnesses for the prosecution.

Valentin de los Reyes testified that for six months from the middle of August, 1943, he was mayor of Sta. Rosa; that he had no knowledge of the arrest of the policemen in Sta. Rosa except "through information"; that he was no longer the mayor at the time of the arrest.

Antonio Patapat declared that he was a constabulary soldier; that he left Sta. Rosa on March 16, 1943; and he denied that he was with the Japanese who seized Major Leopoldo Santos on November 16, 1944. He said nothing regarding Escosura.

Juan Barrera testified that he knew the accused since he was a kid in the barrio of Caiñgin; that during the Japanese occupation the accused was a neighborhood association president; that all that time the accused stayed in barrio Caiñgin, going to town only to get rations.

Angel Tiongco testified that he was mayor of Sta. Rosa from December 4, 1944 to February 6, 1945; that in December, 1944, he met Benigno Ramos and had a talk with him;

that Ramos told him that he wanted to establish a branch of the makapili organization in Sta. Rosa; that he told Ramos that if he wanted to do that they had to release thirteen people who had been kidnapped in the month of November; that Ramos gave him a letter for the Japanese to release those thirteen men but none of them were found and so the makapili was never organized in Sta. Rosa.

The question raised goes to the credibility of the witnesses for the prosecution. We find no reason to disturb the findings of the People's Court. The contradictions pointed out in the witnesses' statements are not of the nature that would tend to impair their credibility. They were details which, in the confusions, excitement and fright the horrible incidents brought about, could very well have impressed the witnesses in different manners or escaped the attention of some but not of the others. The long time that had elapsed is another important factor that has to be considered. Far from being evidence of falsehood, these contradictions constitute a demonstration of good faith and a confirmation of the truth of the appellant's participation.

The alleged discrepancies between the witnesses' testimony in the case at bar and their testimony in another case can not be entertained. We do not have before us the latter testimony except counsel's summary of it in his brief in the case mentioned. Moreover, granting the alleged contradictions, the statements in the other case can not serve as basis for impeaching the witnesses' veracity unless their attention was directed to the discrepancies and they were given an opportunity to explain them. This has not been done.

One of the charges which the People's Court found not to have been proved under the two-witness rule is that appellant was a makapili or a scout battalion. However, although the evidence on this charge does not satisfy the two-witness principle, it suffices, as the lower court has held, for the purpose of establishing adherence to the enemy. Adherence, as differing from overt act, does not have to be substantiated by the oaths of two eye-witnesses. Oral testimony and defendant's conduct show beyond doubt that he was a member of a semi-military armed force called "Scout Battalion", the main purpose of which was to aid the enemy in suppressing and fighting the resistance movement. It was an organization supplied by the Japanese with uniforms, food and weapons, and which actively cooperated with the invaders in the apprehension, torture and assassination of guerrillas or suspected guerrillas. This adherence gives substance and shape and corroboration to the accusation that the appellant's intervention in the arrest of the policemen and the arrest and killing of Major Santos was motivated by treasonable intent.

The judgment of the People's Court is affirmed.

Moran, C. J., Ozaeta, Parás, Feria, Pablo, Bengzon, Brierne, and Montemayor, JJ., concur.

PERFECTO, J., concurring and dissenting:

Adherence to the enemy, being an attitude of the mind and of the will, is psychological and, unless proved by external manifestations, can only be known by the subject himself. External manifestations are facts. The adherence to the enemy by an accused can only be proved by evidence as to his action in which the adherence is manifested. Such acts of the accused are overt acts that, under article 114 of the Revised Penal Code, should be proved by the testimony of at least two witnesses.

Whether appellant was a Makapili or a Scout Battalion is a question of fact, involving his acts or actions as such Makapili or Scout Battalion. Such acts or actions are overt acts under the law, and should be proved by the testimony of two witnesses at least. We cannot agree to the dictum in the majority's opinion to the effect that the two-witness rule is not applicable to the question as to whether appellant was or was not a Makapili or a Scout Battalion. No two witnesses having testified that appellant was a Makapili or a member of the armed body called "Scout Battalion", the pronouncement has no legal basis to stand on.

In other respects, we concur in the decision.

Judgment affirmed.

[No. L-1549. November 2, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs.
MARGARITO CAMPOS (*alias* DODONG), defendant and
appellant.

CRIMINAL LAW; TREASON; EVIDENCE ADDUCED IN THIS CASE CONCLUSIVELY SHOW THE GUILT OF ACCUSED.—The evidence on record has proved conclusively that appellant, a Filipino citizen, as an undercover in the service of the Japanese, participated in the arrest of J. S. and that he killed D. M. one of the civilians who as guerrillas were arrested and gathered first in the schoolhouse of Basak before being brought to the execution ground in the mountains. The acts committed by him constitute the crime of treason as defined and punished by article 114 of the Revised Penal Code.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Lorenzo Sunico for appellant.

*Assistant Solicitor General Manuel P. Barcelona and
Solicitor Jose P. Alejandro for appellee.*

PERFECTO, J.:

The witnesses for the prosecution testified in substance as follows:

Jovito Soria, 36, married, teacher, Clarin, Bohol, testified that in the early part of July, 1944, at about 4 o'clock at dawn, the witness was awakened in their evacuation place in Clarin by a shout not to move to avoid losses. Then Antonio Racaza, with the accused, "rushed to our door with one Japanese coming from the window" with a flashlight. Racaza had a flashlight. They were looking for Benito Soria and the witness answered that there was no Benito Soria there but only Jovito Soria. (1, 2). A Filipino outside said, "That is the one." Racaza told the witness to stand up and tied him with a rope at the back near the window. The witness was tied by Campos and other Filipino undercovers. The witness was asked: "Sondaro, sondaro?" to which he answered: "No, I, there is no single soldier." Campos boxed him in the stomach and he fainted. The witness had been inducted as civilian soldier and as signal officer in charge of the telephone. Arrested with the witness was Leonilo Mercado, mayor of Sibonga. (3). Early in the morning he was brought to the chapel of Clarin. Leonilo Mercado was arrested in his house, but when the witness was brought there, Mercado was not there anymore. When Leonilo Mercado and the witness were inside the chapel, they were boxed by the accused and others. (4). From the chapel they were brought to Inabanga and confined in the municipal jail therein. After two or three days, the accused and one Japanese officer brought the witness to the Home Economics school building of Inabanga and he was forced to surrender arms, and because the witness had no arms he was boxed by the accused. (5). The accused whipped him also. The accused was in the *Kempei-Tai*, and used to go armed and with the Japanese to make arrests. (6). Yamaguchi brought the witness back to Clarin where he was detained for about two weeks. (7).

Abundia Soria, 34, married, Clarin, testified that the accused was among those who arrested her husband in their evacuation place in Catongan, Bonbon, Clarin, about the first of July, 1944. (17). Her husband was tied by the accused Jesus Campos, Teofilo Labra, Ati Adlawan and Antonio Racaza, but the witness does not know where they brought him. The witness was left in the house. Leonilo Mercado was also arrested. Her husband was a soldier of the guerrilla. Perhaps he was maltreated because the witness heard shouts of pain. The witness saw her husband again in the chapel. (18). There she saw also Leonilo Mercado, with bruises and bleeding. The accused was armed. She saw her husband when he came back from Inabanga, he was one of the prisoners in the

Kempei-Tai headquarters in Clarin. (19). One of the prisoners was Leonilo Mercado.(20). Her husband cried of pain because he was maltreated among others by the accused.

Donato Apricio, 44, married, policeman of Clarin, testified that on the morning of July 1, 1944, he saw in the chapel Jovito Soria and Leonilo Mercado who were tied, followed by two undercovers and Japanese. The accused was one of the undercovers. The witness saw the accused in the school building of Clarin. He was a member of the *Kempei-Tai*. (23). He was issuing passes to civilians. The witness was a policeman under the Japanese. He was trusted man of the Mayor. The accused always joined the Japanese patrol for the purpose of apprehending guerrilla soldiers. Those arrested were taken to the *Kempei-Tai* headquarters and investigated. (23). Mercado and Soria were brought to the chapel at 7 o'clock in the morning. (24).

Romualdo Tukib, 28, married, church clerk, Clarin, testified that in July, 1944, at about 10 o'clock in the evening, the accused and other undercovers investigated the witness concerning a telephone apparatus. They took him to the *Kempei-Tai* headquarters, where he saw Jovito Soria as prisoner together with undercovers and Japanese. The next day, he saw the accused whip Jovito Soria. The accused boxed and kicked the witness, blaming him for the telephone apparatus. (25, 26). The witness was not a guerrilla. The accused was armed. He used a leather belt in whipping Jovito Soria, who was arrested ahead of the witness. The witness is blind on the left eye. (28).

Jose de la Cerna, married, customs inspector, Cebu City, testified that on July 29, 1944, there was a bloody struggle which culminated in the mass arrests of people in the vicinity of Doljo, Mambaling, Basak, up to Talisay. The witness was arrested in his house in Basak by two Japanese soldiers. He was told by the Japanese soldiers to proceed to the schoolhouse immediately as there was a meeting there. The two Japanese soldiers left his house and immediately went to the other houses. When the witness arrived at the Basak school he saw many persons already sitting. The newcomers were segregated from the group Filemon Delgado, an undercover, went with a boy to the witness' group and asked him to tell who are those connected with the guerrilla and those who contributed money. The boy pointed to the witness as one of the suppliers of the guerrilla and indicated the person who was the messenger of Governor Abellana connected with the guerrilla. Delgado dragged the witness from the group and brought him to Watanabe who boxed him. The witness fell to the ground, and Antonio Racaza stepped on his throat. He became unconscious, and when he recovered consciousness he was brought to the school with his hands tied

behind his back. Roberto Bautista, another undercover, started investigating about Governor Abellana and the witness brought Domingo. Roberto Bautista beat him with a wooden stick. Other undercovers, unknown to the witness, told Bautista that the witness was connected with the Cebu customs house and had firearms. There were many who were investigated and were later killed in Toong. (28-31).

Guillermo Cañizares, 56, married, farmer, Sibonga, Cebu, testified that he knows the accused who is also known as Dodong. On May 7, 1942, the accused, with Jesus Campos and Olando confiscated witness' shotgun to be surrendered to the Japanese. The accused and companions said that the confiscation was on orders of the Japanese. (38). Jesus Campos stated that he was working under the Japanese intelligence division and that his companions were under him. (39, 40).

Roberto Lariosa, 46, single, public school teacher, Sibonga, Cebu, testified that on May 5, 1942, on the way to barrio Taloot, Jesus Campos accompanied by the accused snatched his revolver. Showing something written in Japanese characters, Jesus Campos said that it was the authority given to him by the Japanese to confiscate all firearms for the Japanese. (44). And that the accused was his subordinate and that both were working for the Japanese. At that time the accused did nothing. (45). The incident happened at 4:00 o'clock in the afternoon. (46).

Kong Niko, 47, married, merchant, Sibonga, Cebu, testified that he knew the accused since he came to the Philippines in 1915. On May 7, 1942, Jesus Campos and the accused went to Toong, where the witness was harvesting his corn at the time and told him to surrender his revolver, otherwise the Japanese general would bring two carloads of Japanese soldiers to the place. Jesus Campos and the accused were both carrying a pistol. (49, 50). The witness delivered his firearm to Jesus Campos. The accused said that the Japanese ordered him to confiscate the firearm. (51). On cross-examination the witness testified that, although he arrived from China since 1915, he came to know the accused in 1925. (52).

Tereso Sanchez, 26, married, laborer, Mambaling, Cebu City, testified that on July 29, 1944, the civilians in Mambaling were apprehended and grouped together and whoever was pointed as a soldier by an undercover named Boy was tied. The accused was present and gave blows to the soldiers. Jose de la Cerna was in the school building of Basak where he was tied and beaten with an iron pipe by the accused. The witness slept in the school building of Basak. The next morning, July 30, those who were apprehended were made to go down from the school building. Tsuriyama, the head of the *Kempei-Tai*, ordered them

to be brought to the mountain of Toong, where they were killed. Among the undercovers present were Antonio Racaiza, Julio Nolasco, Vicente Cobarrubias, Filemon Delgado, (56-59), Perfecto Labra, and others. When they reached the mountain, all those apprehended were ordered to sit down. Ten minutes later, the witness heard the report of a pistol. Then the *Kempei-Tai* leader ordered them to go to the firing line and upon arriving there the witness saw one of his companions who was killed, not knowing by whom. Before the witness was shot, he saw the accused kill Dodong Martinez. Dodong Martinez was made to turn his back. The undercovers took their pistols and asked Dodong where his arms were. Dodong could not tell because he was not a soldier. He was shot. (60). The accused used a revolver. There were about 17 who were killed. What they did to the witness was similar to what they did to Dodong Martinez. He was shot by Filemon Delgado. "I was hit on the back of my neck on the left side and the bullet went out on my cheek under the left eye." As a result, the witness lost the sight of his left eye. The witness showed a scar on the left side of the neck but no scar was found below the left eye. (61) The bullet hit him on the nape of the neck and went out below his left eye. (65). Below the left eye the witness showed an elongated scar, about two centimeters just on the rim of the lobe of the eye. (67).

Dionisio M. Flores, 51, married, physician, Cebu City, testified that he finished medicine in Santo Tomas University in 1921 and has practiced medicine since then. He practiced surgery for three years in the hospital. The scar on the left lower nape of Tereso Sanchez is probably due to a bullet wound. It is hard to determine whether the scar below the left eye is due to a bullet wound or some other weapon. It is possible that a bullet could have made its exit from the left eye, and that it is possible for a man to live after having been hit by a bullet, entering his lower left nape, and making an egress below the left eye if it did not touch any important vessel. (69, 70, 71). The witness said that it is quite hard to determine whether the scar below the left eye of Tereso Sanchez is due to a bullet wound or to a surface wound. He did not examine Sanchez at the time he received the wound. It is hard to determine if the scar is due to a wound which was the egress of a bullet. (78).

Antonio de la Cerna, 28, married, laborer, Cebu City, testified that at 7 o'clock in the morning of July 29, 1944, he was arrested by undercovers in Alaska, Mambaling. He was ordered to group together with others in Mambaling and he saw several undercovers, including the accused, who was one of those who boxed him. He also maltreated others. (80). The leader of the Japanese Subi-

tai arrived. He went to a house at the plaza in front of the chapel of Mambaling and ordered the arrested persons to form a line one by one, and then ordered them to walk with their face turned to the left. Behind the Japanese leader there were two persons placed in concealment in the house, named Boy and Tirso, who indicated who were soldiers and who were not. Boy told the Japanese that the witness was a soldier. Then Campos tied him and asked him where his arms were. Because the witness did not reveal his arms and said that he was a civilian, Campos boxed and kicked him. The witness was brought with others to the schoolhouse of Basak, where he was tied and linked together with others. (80). At 7 o'clock the next morning, the witness and others were made to walk towards Sandayong barrio. There they found a man bathing. He was arrested and asked where his soldiers were. Because the man did not tell where the soldiers were, he was tied, hanged and beaten. Then they were brought to Toong. (81). The Japanese were making sketches of the place where the arrested persons were going to be killed. They were asked for their arms and those who did not reveal theirs were killed by the undercovers and the Japanese. The accused killed Dodong Martinez. (82). He used a revolver. (83).

Before the evidence for the defense, the accused admitted that he is a Filipino citizen. (85, 86).

The witnesses for the defense testified in substance as follows:

Bernarda Regodon, 28, married, Sibunga, Cebu testified that she heard that the accused was captured by the Japanese together with Jesus Campos. (87).

Mariano T. Jaucian, 35, married, testified that the first time he saw the accused he was being held by the Japanese as a military prisoner, the same as Jesus Campos and Silvino Centeno. That was way back in 1942. At that time the witness was in the Cebu police attached to the Japanese military police. After two or three months, the prisoners were forwarded to Manila. (90). The accused was investigated by Sergeant Tagashi Yoshida at the Snead dormitory. He was severely maltreated with a baseball bat, required to stand with a can full of water on his head, and for every drop he allowed to fall he was beaten or maltreated. (91). The accused fell unconscious three or four times. A Japanese doctor gave him injections to revive him. (93).

Antonio Racaza, 25, single, testified that he knew the accused in Bohol, when he was sent there by the Japanese. Yoshida entrusted him to Watanabe as a prisoner in Clarin on July 25, 1944. The witness was the chauffeur of Watanabe. (95). The accused was assigned to the kitchen and slept in a room used as a prison cell. He helped in the

cooking of food and taking of water. He remained there from the month of June to July 25, 1944, when he went to Cebu. (97).

Margarito Campos, 29, single, the accused, testified that on July 7, 1942, he was arrested by the Japanese imputing to him the making of anti-Japanese propaganda and espionage. He was arrested with Jesus Campos. They were taken to Snead dormitory, served as a Japanese prisoner. Yoshida investigated them as to the arms taken by Jesus Campos. (100). The accused was beaten with an indoor baseball bat and was forced to lift a can full of water. Whenever he lacked enough strength to hold the can, he was beaten. The operation took place for two or three hours. The accused said that he took no part in the collection of arms. He was confined in the Snead dormitory for more than three months. (101). On September 26, 1942, the accused escaped, but three days later, September 29, he was recaptured by the Japanese. He was again maltreated. On September 29, 1944, he was brought to the Japanese Subitai in San Carlos College where was forwarded to the *Kempei-Tai* which maltreated him. He was boxed, beaten with the butt of the rifle by the Japanese officers and soldiers. He was asked with regard to his escape. He was kept by the Japanese *Kempei-Tai* until October 4, when he was sent to Manila. (102). He was sent with several co-prisoners under heavy guard in a steamship. On arriving in Manila on October 7, they were brought to the Japanese military administration, at the Marsman building. Then they were brought to the Bilibid Prison. (103). In December, 1942, he was court-martialed together with Jesus Campos and S. Campos for anti-Japanese propaganda and espionage. The charge was not true. It was not true that the accused is one of those who apprehended Jovita Soria, a school teacher of Clarin. The witness was one of the prisoners brought to Clarin under the custody of the Japanese Watanabe. It is not true that he arrested Cirilo Mercado, mayor of Sibonga. He had not killed Dodong Martinez whom he does not even know. He was not present in the mass arrest in Basak on July 29, 1944, because he was sent back to the normal school building where he was imprisoned again. It is not true that he maltreated and tortured Jose de la Cerna. While the accused was in Basak, the Japanese asked him whether he knew De la Cerna, and he answered that he did not know him. (38). De la Cerna was asked if he knew the accused and he answered no. The Japanese ordered them to push each other. It is not true that the witness was present during the Basak massacre or that he had beaten De la Cerna with an iron pipe. (105). After the accused was court-martialed in Manila, he was sentenced to seven years imprisonment, and in January, 1943, he was sent to Bilibid Prison in Muntinglupa. (106). The court-martial was pre-

sided over by five Japanese officers. There was an interpreter. There was no prosecutor. The interpreter acted at the same time as prosecutor. (108). There was no one who testified against the accused. He was made to answer the charges against him. No defense counsel was assigned to the accused. No witnesses were presented against the accused. (110). The accused was not allowed to present witnesses in his favor. The court-martial trial lasted for half an hour. (111).

Felipe C. Moreno, 41, married, goldsmith, Cebu City, testified that the accused was staying with him when Jesus Campos ordered this arrest. (120). The witness was not present when the arrest took place. (120, 121).

Cornelio C. de los Santos, 35, single, attorney-at-law, resident of Sibonga, testified that on July 16, 1942, when he was taken from Sibonga to Cebu City, he was placed in a cell where the accused and others were confined. They were together from July 16 to August 27 when the witness was transferred to the Cebu provincial jail, as a prisoner of war. (124, 125).

Margarito Campos, recalled, declared that there was a high ranking officer of the Philippine Army who was confined with him in the cell. It was Col. Emmanuel Baja, who wrote a poem, one dedicated to his wife who was a hostage at Fort Santiago and the other "The Rosary" dedicated to Raymunda Guidote, his prisonmate inside the Bilibid Prison. They read as follows:

"PRISONER'S SONG (Dedicated to Mrs. Emmanuel Baja,
Fort Santiago, Manila).

"Resigned to fate and all I hope and pray
Throughout the long weary hours of the day
Thus I measured my time from morn till night
Praying and hoping for the Divine Light.

"A night of waiting is soon passed and gone
Hopeless, yet a new hope comes with each dawn
Like waves although on shores or crags breaking
Still keep on surging and keep on coming.

"As each hope dies one much stronger is born
Too on the wing in the early morn
Soaring heavenward and reaching the sky
From whence it flies back to earth with a sigh.

"Though dreams would wither and hopes fade away
Happy I greet the birth of a new day
With brighter hope each time
A prayer more sacred and more sublime.

"However thorny, rough and dark is my way
Though cruel and brutal and bitter each passing day
I do not lose hope till end of my trail
Where naught prevails and prayer will avail.

"ROSARY (Dedicated to Raymunda Guidote).

"The Rosary your hands have wrought
From old rags in your prison cell

Recalls my good old thoughts of stories Mother used to tell
Of parables told by Father, pious stories of olden time
Of prayer songs sung by Mother and of church bells telling their chimes.

"As the Angelus ushers the night when old folks at home kneel and pray

The vesper bells in the twilight at the close and end of the day
Rosary, oppressed's salvation, you have cours'd divine life, light and love

The illumination, true devotion and the glows from high above
And in my misery I pray a new Rosary day by day
Be eternal, everlasting, forever and ever Amen.

"My guards may burn your Rosary
They may tear cross and beads apart
But it will remain in my memory
For I enshrine it in my heart."

The evidence on record has proved conclusively that appellant, a Filipino citizen, as an undercover in the service of the Japanese, participated in the arrest of Jovito Soria, a teacher who was inducted as civilian soldier and as signal officer, in charge of the telephone of the resistance movement, and that he, on July 21, 1944, in the mountains of Toong, killed Dodong Martinez, one of the civilians who as guerrillas were arrested in Mambaling on July 21, 1944, and gathered first in the schoolhouse of Basak before being brought to the execution ground in the mountains. Jovito Soria and his wife Abundia have testified about the arrest of the first, and the killing of Dodong Martinez was testified to by Tereso Sanchez and Antonio de la Cerna. As regards the alleged arrest of Leonilo Mercado, there is no satisfactory evidence that the accused took part in it. There is conclusive evidence that he was one of those arrested and later confined in the Japanese garrison in Clarin, but there is nothing to show as to who actually effected his arrest.

The acts committed by appellant constitute the crime of treason as defined and punished by article 114 of the Revised Penal Code. The lower court sentenced him correctly to suffer life imprisonment, which should be understood to be *reclusión perpetua*, with the accessories of the law, and to pay a fine of ₱10,000 and the costs.

The appealed decision is affirmed.

Moran, C. J., Ozaeta, Parás, Feria, Pablo, Bengzon, Brieres, Tuason, and Montemayor, JJ., concur.

Decision affirmed.

[No. L-2041. November 8, 1948]

QUIRICO ABETO, petitioner, vs. SOTERO RODAS, respondent

1. PUBLIC OFFICERS; "QUO WARRANTO"; PRESCRIPTION.—Actions for quo warranto are now governed by Rule of Court No. 68, section 16 of which provides that "Nothing contained in this rule shall be construed to authorize an action * * * an

officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose;" * * *.

2. *Id.*; *Id.*; PLEADING AND PRACTICE.—The period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss.

Per Perfecto J., dissenting:

3. NOT OUSTED.—Upon the undisputed facts in the case, petitioner continues to be a judge of first instance of Manila. He was not ousted and there is no ground for his removal. He has not reached the age of 70. He is not guilty of misbehavior and is not incapacitated to discharge the duties of his office. Under the Constitution he is entitled to continue holding his office.

4. SECTION 16 OF RULE 68.—This section contemplates two starting points in a case in which a public officer is involved; (*a*) date when the cause of ouster against respondent accrues, and (*b*) the date when the right of plaintiff to hold office has arisen. In either case, the rule is inapplicable to the petitioner, without going into *ad absurdum*.

5. A CONSTITUTIONAL MANDATE IS SUPREME.—The time limit of section 16 of Rule 68 is not applicable in the case at bar, because its application will result in defeating the judicial tenure guaranteed by section 9 of Article VIII of the Constitution, it should give way to the constitutional mandate which is supreme.

6. IMMATERIAL QUESTION.—The controversy as to whether the time by section 16 of Rule 68 is a *conditio sine qua non* or a statute of limitation is immaterial, because it affects a substantive right which is beyond the rule-making power of the Supreme Court. The judicial tenure of office is not only a substantive right but also a constitutional right and, as such, is even beyond the legislative power of Congress.

ORIGINAL ACTION in the Supreme Court. Quo warranto.

The facts are stated in the opinion of the court.

Sotto & Sotto for petitioner.

PARÁS, J.:

This is an original action for quo warranto in which the petitioner seeks the ouster of the respondent as presiding Judge of the Sixth Branch of the Court of First Instance of Manila and the reinstatement of the petitioner to said judicial position. It is alleged that the petitioner was occupying the position until August 1, 1941, when he was suspended by the President of the Commonwealth upon recommendation of this Court; that on October 12, 1946, after proper investigation, the petitioner was exonerated by the President of the Philippines from the charges that gave rise to his suspension; that notwithstanding his exoneration, the petitioner was not restored to his former position then held by the respondent. The petitioner herein invokes his right to the constitutional tenure of judges.

We note that this action was commenced only on March 2, 1948, or more than one year from October 12, 1946, when, according to his own theory, the petitioner should have been reinstated. Actions for quo warranto are now governed by Rule of Court No. 68, section 16 of which provides that "Nothing contained in this rule shall be construed to authorize an action * * * an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; * * *." A similar provision in the Code of Civil Procedure was given effect in *Bautista vs. Fajardo*, 38 Phil., 624, wherein this Court held: "It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable." We would go farther by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss.

We are therefore constrained to dismiss the present action. So ordered, without costs.

Moran, C. J., Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

FERIA, J., dissenting:

I strongly dissent from the decision of the majority.

The pertinent provision of section 16, rule 68, is substantially taken from section 216 those of the old Code of Civil Procedure, Act No. 190, as amended, which read as follows:

"SEC. 216. *Limitations.*—Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose."

This Court in construing the above quoted provisions in the case of *Bautista vs. Fajardo* (38 Phil., 624) quoted in the decision of the majority and the case of *Agcaoili vs. Sugitan*, 48 Phil., 697, has held that said section provides for limitation of an action of *quo warranto*.

In the case of *Bautista vs. Fajardo* it was said:

"* * * if a petitioner delays bringing his action, as in this case, for more than one year after his right to hold the office arises, the action is barred although the usurper or other person holding the office at the time of the institution of the proceeding to oust him may not himself have been in adverse possession for a full year.

* * * * *

"It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be

subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable. It is evident that where the action to recover an office has once prescribed it can not be revived by any change in the personality of the incumbent; and it cannot be admitted that a new right, different from that which he had previously possessed, accrued to the petitioner upon May 6, 1917, when the respondent was inducted into office. If the petitioner had any right it had existed at least from the beginning of the official term, and the prescription must be computed from that date." (38 Phil., 627, 628.)

And in the case of *Agcaoili vs. Sugitan*, this Court held:

"In our opinion, even granting that section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. He was justified in delaying the commencement of his action until an answer to his protest had been made. He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary." (48 Phil., 676, 697.)

The very caption of the above quoted provisions, and of section 16, Rule 68, plainly shows that it refers to "Limitation" of action. Second paragraph of Act No. 336 of the Code of Commerce which provides that:

"The purchaser shall have a right of action against the vendor for defect in the quantity or quality of merchandise received in bales or packages, provided he brings his action within the four days following that of its receipt, and the damage is not due to fortuitous event, inherent defect of the thing, or fraud."

has been construed by this Court, in the case of *Ban Kiat & Co. vs. Atkins, Kroll & Co.* (44 Phil., 4, 12-13), to provide for limitation of actions, because it refers to the time for bringing an action, and therefore it was superseded by the statute of limitation contained in the old Code of Civil Procedure, according to this Court.

The provisions of our law on *quo warranto* were taken from the laws or statutes in force in the States, and there is no statute or decision in the States of the Union which considers the time within which a special civil action of *quo warranto* as a condition precedent to the institution of the action. It has always been construed or established as a limitation of action (51 C. J., p. 330; 44 Am. Jur., p. 62).

The limitation provided for in said section 16, Rule 68 applies not only to action against an officer for the ouster from office, whether a public office or an office in a private corporation, but also to actions against a corporation for forfeiture of charter, and against the person ousted for damages. It was substantially taken from sections 211 and 216 of old Code of Civil Procedure, and it can not have a different import from the latter's provisions, because this Supreme Court has no power under the Constitution to promulgate Rules providing for limitation of actions, as well as conditions precedent to the bringing of an action, for they are not matters of procedure, pleading and practice, but of substantive law. Said section 211 provided that

the person declared entitled to the office may, at any time within one year after the date of the judgment, bring an action against the person ousted and recover the damages sustained by reason of his usurpation; and section 216 prescribed that no action shall be brought against a corporation for forfeiture of charter, or against an officer to be ousted from his office unless within one year after the case of such ouster or the right to hold office arose. Besides, there is absolutely reason why the time within which such actions must be instituted should be considered as a condition precedent to the institution of an action or right of action.

In the case of *Sempio vs. Del Rosario*, 44 Phil., 1, this Court construed the period of nine days as a condition precedent to or essential element of the right of legal redemption, because said period refers to the exercise of legal redemption and not to the institution of the action to redeem. That is, that the legal redemptioner in such case has, within that period, to exercise his right or make demand upon the purchaser of an adjacent rural estate with an area less than one hectare and offer the repurchase price, because if he does not do so he loses or waives his right of legal redemption. If the latter refuses to accept it, he may file the corresponding action at any time with the corresponding period of limitation provided by law. A substantive right may be exercised without necessity of instituting a judicial action against the one having the correlative obligation, unless the latter refuses or fails to perform it.

The extinction of a substantive right must be distinguished from the bar by the statute of limitation of the action to enforce it. The right to institute an action may be barred by the statute of limitation, and yet the substantive right subsists, as shown by the fact that if the defense of prescription of action or statute of limitation is not set up, the plaintiff or the person having the right may enforce it may recover. But the extinction of a right carries necessarily with it the extinction of the corresponding right of action, as well stated by the late Chief Justice Arellano in the case of *Domingo vs. Osorio* (7 Phil., 405).

BRIONES, J.:

I concur in the foregoing dissenting opinion.

PERFECTO, J., dissenting:

The majority is of opinion that petitioner, in order that he may legally seek the remedy prayed for in his petition, should have filed the same within the one year provided by section 16 of Rule 68 which reads as follows:

"SEC. 16.—Nothing contained in this rule shall be construed to authorize an action against a corporation for forfeiture of charter unless the same be commenced within five years after the act complained of was done or committed; nor to authorize an action

against an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; nor to authorize an action for damages in accordance with the provisions of the last preceding section unless the same be commenced within one year after the entry of the judgment establishing the plaintiff's right to the office in question."

The above quoted reglementary provision is invoked by the majority to defeat petitioner's tenure of office as guaranteed by the first clause of section 9 of Article VIII of the Constitution which reads as follows:

"SEC. 9.—The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice fifteen thousand pesos."

On August 1, 1941, upon the Supreme Court's recommendation, petitioner was suspended by the President of the Commonwealth of the Philippines as judge presiding over one of the branches of the Court of First Instance of Manila.

After due investigation of the charges filed against petitioner, disregarding the recommendation of the Supreme Court, the President of the Philippines issued on October 12, 1946, Executive Order No. 12, exonerating petitioner from the charges against him and ordering the payment of his salaries from August 1 to December 31, 1941, plus five months' salary in accordance with Administrative Order No. 16 dated December 12, 1941, and Administrative Order No. 27 dated December 7, 1945.

Notwithstanding his exoneration, petitioner alleges that he was not yet restored to his position as judge of first instance of Manila which is illegally withheld by respondent.

Respondent Judge Sotero Rodas was given by this Court ten days from notice within which to answer the petition. No answer has been filed, and the case has been submitted for decision without said answer on July 23, 1948.

The facts in this case are not disputed and upon them, there cannot be any question that petitioner is still a judge of first instance of Manila. He was not ousted from his position. He was only suspended by reason of the charges filed against him from which he was at last completely exonerated. There is no dispute and there has never been any dispute as to the fact that there is no ground to remove him from office. There is also no pretense that petitioner has reached the age of seventy. Under the Constitution, he is entitled to hold office until he reaches the age of seventy unless found guilty of misbehavior or he

becomes incapacitated to discharge the duties of his office. He has been exonerated from charges of misbehaviors and there is no showing that he has become incapacitated. He is entitled to continue holding his office as a constitutional right.

In applying section 16 of Rule 68, the majority would have it appear that petitioner should have filed his petition within one year from October 12, 1946, the date of Administrative Order No. 12, exonerating him from the charges filed against him.

Section 16 of Rule 68 contemplates two starting points in a case in which a public officer is involved: (a) the date when the cause of ouster against respondent accrues, and (b) the date when the right of plaintiff to hold office has arisen.

In either case, the rule is inapplicable to petitioner. The record offers no definite information as to the date Judge Rodas started to occupy petitioner's position in the Court of First Instance of Manila. Because the filling of petitioner's position by respondent cannot be attributed to any other reason than that the position was vacated as a result of petitioner's suspension from office, we are entitled to presume that respondent started to occupy the position on or about August 1, 1941, and that should be the date when the cause of respondent's ouster must have arisen. Then the application of the rule would necessarily lead us *ad absurdum*. How could petitioner seek respondent's ouster within a year, that is, on or before August 1, 1942, when his exoneration took place only on October 12, 1946. How could he seek respondent's ouster years before he was cleared of the charges which caused his suspension?

As a matter of fact, petitioner's suspension since August 1, 1941, has not yet been lifted. Administrative Order No. 12, exonerating petitioner from all the charges filed against him, in effect continued his suspension for an indefinite period of time, when therein it is stated: "Because his office has already been filled, his reinstatement or re-appointment is not now possible."

Therein appears clearly that President Manuel Roxas who exonerated him, is the same one who refused to reinstate him in his office.

Regarding the second case contemplated by section 16 of Rule 68, which refers to the time when plaintiff's right to hold office has accrued, the rule is also inapplicable, because petitioner's right to hold office started since he was duly appointed as judge of first instance of Manila. Such event had taken place before his suspension on August 1, 1941. To apply to him the rule is again to exact from him an impossibility.

The authors of the rules must have used the words "to hold office" advisedly. Their meaning cannot be identified

with the idea involved in the word reinstatement. Reinstatement means assuming again the functions of the office already held.

But, even in the false hypothesis that section 16 of Rule 68 is applicable to the case at bar, because its application will result in defeating the judicial permanent tenure of office guaranteed by section 9 of Article VIII of the Constitution, it should give way to the constitutional mandate.

There is no quarrel with the pronouncement made in *Bautista vs. Fajardo* (28 Phil., 624) cited in the majority opinion that "it cannot be supposed that the legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable." But the pronouncement has absolutely no bearing on petitioner's case because it starts from a major premise that does not and cannot exist in this case. The premise refers to a public office "dependent upon prescription," and the pre-Commonwealth Supreme Court undoubtedly had in mind offices regulated by statutory provisions. Petitioner's office is regulated by the Constitution, under which it is imprescriptible.

There is no provision in the fundamental law setting any period for the prescription of the office of a judge and there is no authority granted to Congress or to the rule-making power of the Supreme Court to provide for any period of prescription of said office. The limitations set by section 9 of Article VIII of the Constitution for judicial tenure of office cannot be increased by statutory provision. Misbehavior or incapacity to discharge the duties of office are only the two limitations permitted by the Constitution.

We penned the majority resolution of this Court, finding petitioner guilty of the charges filed against him and recommending that he be not allowed to return to office. But having been exonerated by the President of the Philippines, regardless of the majority opinion of this Court, petitioner is entitled to all the benefits resulting from his exoneration, and this Court which, in compliance with official duty, recommended the non-reinstatement of petitioner, is now duty bound, under the law, to order his reinstatement as a necessary and unavoidable consequence of the exoneration decreed by the President of the Philippines.

Lots of time and discussion have been devoted by several Justices to the question as to whether the provision of section 16 of rule 68 applied by the majority to petitioner's case, has the nature of a condition precedent or the nature of a limitation of action. Those who voted to defeat petitioner's claim have done so upon the premise that the provision in question constitutes a condition precedent,

but not a prescription of action. The controversy on the point appears to us immaterial. Considered as a *conditio sine qua non* or as a limitation of action, in either case, the provision affects a substantive right, so substantive that it is expressly safeguarded by section 9 of Article VIII of the Constitution, the right of judicial tenure.

Affecting as it does a substantive right, it should not be given effect against petitioner, because the rule-making power of the Supreme Court, the authority upon which the reglementary provision has been enacted, cannot diminish, increase, or modify substantive rights, and it is so expressly provided by section 13 of Article VIII of the Constitution.

Therefore, whether it is a condition precedent, a *conditio sine qua non*, a prescription, or a statute of limitation, the reglementary provision in question cannot impair petitioner's constitutional right to his tenure of office which, because expressly guaranteed by the Constitution, cannot even be limited or modified by any legislative enactment of Congress.

The petition should be granted and the petitioner is ordered reinstated in his position as judge of the Court of First Instance of Manila, with the ouster of whoever may be actually holding said position. No costs.

Action dismissed.

[CA-No. 23. November 4, 1948]

CATALINA BILLION, assisted by her husband, RICARDO DE CASTRO, CONSORCIA BILLION, and MEDINA BILLION, plaintiffs and appellees, *vs.* IRINEO BILLION, PERFECTA BILLION, BARILLA BILLION, and VICENTE BILLION, defendants and appellants.

1. **WILLS; EXECUTION; FORMALITIES UNDER THE CIVIL CODE.**—The law governing the execution of wills in 1896, when V executed his will in question, is article 694 of the Civil Code, which requires that the will should be executed before a notary public. According to article 704 of the Civil Code, wills executed without the authentication of a notary shall be ineffective if they are not afterwards reduced to a public instrument and recorded in a protocol in the manner prescribed in the Civil Procedure, which has not been done with regards to the will in question.
2. **DESCENT AND DISTRIBUTION; WITHOUT A WILL OR UNDER A VOID WILL; COLLATION.**—Under article 902 of the Civil Code, V. B. must be considered as having died without a will or under a void will and therefore, his properties passed to his only son J. B. by operation of the law. They should be collated as all properties received by forced heirs by way of gratuitous title during the lifetime of the deceased.
3. **ID.; PRESCRIPTION AMONG CO-HEIRS.**—C could not have acquired the ownership of the parcel in question by prescriptive possession against her co-heirs. They could not be excluded from their claim to the property.

APPEAL from a judgment of the Court of First Instance
of Pangasinan. De la Cruz, J.

The facts are stated in the opinion of the court.

Primicias, Abad, Mencias & Castillo for appellants.
Leoncio C. Belisario for appellees.

PERFECTO, J.:

Seven years ago, that is on June 25, 1941, plaintiffs filed with the lower court a complaint for the partition of thirteen immovable properties located in Alaminos, Pangasinan, and of their income and products. They alleged that the properties were left by Juan Billion, who died on April 16, 1937, and whose heirs are both plaintiffs and defendants, and that defendants Irineo and Perfecta Billion took charge of the administration of the properties on the death of Juan Billion. Plaintiffs claim that all the plaintiffs and defendants surnamed Billion are entitled each to an undivided one-seventh of the properties. On July 22, 1941, defendants filed an answer, admitting some allegations of the plaintiffs and denying others, and putting up special defenses and a counterclaim.

On December 2, 1942, both parties agreed that plaintiffs Catalina and Consorcia Billion and defendants Irineo, Perfecta, Barilla, and Vicente Billion are the legitimate children of the late Juan Billion, and plaintiff Medina Billion is the only daughter of the late Francisco Billion, another son of Juan, that the properties enumerated in paragraph (2) of plaintiffs' complaint excepting parcels M. N. and O. as well as the properties enumerated in paragraph (2) of the special defenses of the defendants, belonged sometime or another to Juan Billion. On September 30, 1943, decision was rendered, wherein the following seventeen declarations were made:

"(1) That Juan Billion died intestate, leaving as his heirs his children, namely: Catalina, Consorcia, Irineo, Perfecta, Barrilla and Vicente, and Medina, who is the only legitimate daughter of Francisco Billion, a deceased son of Juan Billion;

"(2) That each is entitled to receive one-seventh (1/7) of the properties left by the deceased Juan Billion;

"(3) That the properties left by the deceased Juan Billion are parcels (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l), and (m) of the complaint and (b) of the counterclaim;

"(4) That parcel (a) of the counterclaim is the exclusive property of Catalina Billion;

"(5) That parcels (n) and (o) are the exclusive properties of Irineo Billion;

"(6) That the properties of Juan Billion, from the time of his death, five a rent of 99 piculs of palay of 100 kilos each valued at P6 per picul, except the agricultural year 1941-1942 in which year it is estimated that the defendants received only one-half of the products;

"(7) That since the defendants have received the products from the time of the death of Juan Billion, to the present, they are hereby ordered to pay the plaintiffs their corresponding shares after deducting the amounts paid by them on the accounts of the estate;

"(8) That Juan Billion, at the time of his death, left an indebtedness in the amount of ₱400 to Gregorio Basobas; ₱100 to Francisco Ranit; and ₱97.44 to the Agricultural Credit Coöperative Association of Alaminos, Pangasinan;

"(9) That the defendants, during the last illness as well as on the occasion of the funeral of the deceased Juan Billion, spent the amounts of ₱40 for medicines; ₱37 for doctor's fee; ₱7 for coffin; and ₱12, the value of the pig killed and used on the day Juan Billion died;

"(10) That the defendants also paid the amount of ₱39 for land taxes;

"(11) That from the share of Consocia Billion the sum of ₱97 should be deducted which amount has been sent by Barilla Billion from the sale of palay harvested from the estate;

"(12) That the claim of Perfecta Billion for compensation for the different sums she alleged to have sent to Medina Billion is hereby disallowed;

"(13) That the amount of ₱829.44, the sum total of the amounts mentioned in paragraphs (8), (9), (10) and (11), be deducted from the value of the products of the estate;

"(14) That the amount of ₱500 claimed by Irineo Billion cannot be credited to him and his claim, therefore, is hereby dismissed for lack of sufficient evidence;

"(15) That parcel (k) has been sold by the heirs for the amount of ₱227, which had been received by the defendants, but should be paid to the common mass of properties for partition;

"(16) That parcels (l) and (m) should be assigned to Irineo Billion as his share in the inheritance and should the value thereof exceed his 1/7 share in the properties, Irineo Billion should be required to pay the difference; and

"(17) That should the parties fail to come to an amicable settlement in accordance with this decision, the Court, after the time fixed by law, shall appoint Commissioners to make the partition."

Appellants raise several questions in their eight assignments of error. They are to be disposed of separately.

I

Appellants contend that the lower court erred in not ordering that the parcel of land situated in barrio Bisocol, Alaminos, described as parcel "a" of paragraph (1) of the defendants' special defenses, be collated with the mass of the estate of Juan Billion for the determination of the share of each of his heirs.

According to the lower court, the parcel of land in question is in the possession of Catalina Billion and her husband, Ricardo de Castro. On December 12, 1896, Victorio, father of Juan Billion, executed a will, in paragraph (4) of which he stated that he and his wife, Telesfora Reyes, gave said parcel of land to Catalina, because the latter had been living with them and was brought up by them since infancy. Juan Billion was named executor in the will. On March 16, 1903, after the death of Victorio, his widow executed a document confirming the terms of the will and the fact that the parcel of land in dispute was given to Catalina. The will of Victorio was not executed in accordance with the applicable law at the time of its execution, as it was not ratified before a notary public, and

was not probated. Before Catalina acquired the possession of the parcel of land in question, it was in the possession of Juan Billion who administered it in the name of Catalina and utilized the income derived therefrom for her maintenance. The lower court concluded that, because the property has been in the possession of Catalina for a period of more than forty years, in virtue of said continuous possession, the property has been vested on her, and should not be brought to the common mass for partition.

The law governing the execution of wills in 1896, when Victorio executed his will in question, is article 694 of the Civil Code, which requires that the will should be executed before a notary public. According to article 704 of the Civil Code, wills executed without the authentication of a notary shall be ineffective if they are not afterwards reduced to a public instrument and recorded in a protocol in the manner prescribed in the Civil Procedure, which has not been done with regards to the will in question.

Appellants contend that, under article 902 of the Civil Code, Victorio Billion must be considered as having died without a will or under a void will, and therefore, his properties passed to his only son Juan Billion by operation of the law and, therefore, should be collated as all properties received by forced heirs by way of gratuitous title during the lifetime of the deceased.

Appellants' contention is well taken. Catalina's claim as to the ownership of the parcel of land in dispute is based on the will executed by her grandfather Victorio. There being no dispute as to the invalidity of said will, her claim has no ground to stand on. That upon Victorio's death, Juan Billion took possession of the property, and plaintiffs admitted that it was declared for tax purposes in the name of Juan Billion, and that Ricardo de Castro, Catalina's husband, testified that she did not have any property when he married her, only serve to emphasize the fact that she did not acquire the ownership of said parcel of land.

Catalina could not have acquired the ownership of the parcel in question by prescriptive possession against her co-heirs. They could not be excluded from their claim to the property.

II

Appellants contend that the lower court erred in holding that there was no valid partition made by Juan Billion among his heirs.

The lower court declared in its decision the following:

"* * * According to the testimony of the defendants, Juan Billion, before his death, gathered his children and divided his properties among them, but that this partition was made verbally. Since this procedure followed by the deceased Juan Billion is not one of the valid conveyances established by law, it cannot have any valid

effect. Although it has been established by our Supreme Court in the case of De Guzman vs. Pangilinan, 28 Phil., 322, that 'where ancestors make partition of properties and the heirs entering into the possession of the same have been mutually made and assented thereto, no written document is necessary to sustain the partition', yet in the case at bar the plaintiffs have not assented to the verbal partition made by the deceased Juan Billion as they were not present during the alleged partition, nor have they entered into the possession of the parcels assigned to them. Since the alleged partition made by the deceased Juan Billion is of no legal effect and there being no will or testament, the present action for partition is in order." (Record on Appeal, pp. 37-38.)

Appellants' contention is untenable. The successive donations made by Juan Billion to several children is incompatible with the singleness and simultaneity in the partition they alleged to have taken place.

III

Appellants alleged that the lower court erred in holding that the price of palay from 1937 to 1942 was ₱6 per picul, and suggest that the lower court's pronouncement be modified by taking the average between ₱5 per picul, the price given by plaintiff Catalina Billion, and from ₱3 to ₱3.50 per picul, the prices given by appellants.

Upon the evidence, we are of opinion that the price fixed by the lower court should be reduced to ₱4.25 per picul, which seems to be the reasonable medium between the exaggerated contentions of both parties, as while appellants would set the price from ₱3 to ₱3.50, the witnesses for the appellees would set it at ₱6, ₱7, ₱8 and ₱9. Besides, ₱4.25 is the average between the maximum given by of ₱3.50 given by appellants and the minimum given by appellees, that of ₱5 given by Catalina Billion herself.

IV

The fourth assignment of error made by appellants is necessarily related to the first question as to whether the parcel of land "a" of paragraph (1) of the special defenses should be collated for partition purposes. Appellants contend that the fruits of said parcel should also be collated.

Appellants' contention is well taken. The collation of the fruits should be made in accordance with the following provisions of article 1049 of the Civil Code:

"The fruits of and interest produced by property subject to collation shall not belong to the estate except from the day on which the succession is opened. For the purpose of determining the amount thereof, the fruits and interest produced by property of the estate of the same kind as that subject to collation shall be made the basis of the calculation."

V

Appellants contend that the lower court erred in holding that the amount of ₱227, proceeds of the sale of the parcel "k" of the second paragraph of the complaint, be made a part of the estate. They alleged that said property

was sold by Juan Billion during his lifetime, the sale having been ratified by his heirs by executing the deed of sale, Exhibit 3, signed among others, by plaintiffs Catalina Billion and Consorcia Billion, and that Catalina's contention that she did not get her share from the sale of the land has no merit because none of the other heirs got any, as the proceeds were spent by Juan Billion himself during his lifetime.

Appellants' position is correct. What has been spent by Juan Billion cannot be part of the properties he left.

VI

Appellants contend that the lower court erred in holding defendants liable to the plaintiffs to the extent of three-sevenths of the products of the property from 1937 to 1942, as there is no evidence that Vicente Billion had anything to do with the products pertaining to others, while Perfecta Billion assumed responsibility for the products of the share corresponding to Medina Billion and Barilla Billion for the products of the share of Consorcia Billion.

Considering the evidence, the contention is well taken with respect to defendant Vicente Billion, but with respect to the other defendants, the lower court was correct. The responsibilities assumed by Perfecta Billion and Consorcia Billion do not relieve Irineo Billion from his responsibility in favor of plaintiffs.

VII

The next assignment of error made by appellants is that the lower court erred in believing the testimony of Perfecta Billion regarding her delivery to Medina Billion of the latter's share of the products.

There is not enough ground why we should reverse the conclusion of the lower court, which had the opportunity of hearing the witnesses of both sides.

VIII

The last assignment of error made by appellants refers to the lower court's failure to credit to Irineo Billion ₱500 for redeeming the property mortgaged by Juan Billion to Gregorio Basobas.

Appellants alleged that during his lifetime Juan Billion mortgaged the parcel of land known as parcel "b" of the second paragraph of the complaint to Gregorio Basobas, and that at present the possession of the property is in the hands of the defendant Barilla Billion, while Irineo Billion, as evidenced by Exhibit 2, mortgaged his own property, his purpose being to redeem the property from Gregorio Basobas.

The lower court said, respecting the parcel in question:

"The claim of defendant Irineo Billion, that parcel b was mortgaged by Juan Billion to Gregorio Basobas for the amount of ₱500

and as redeemed by said Irineo Billion for the same amount is not supported by any other evidence. He has failed to produce any document showing that he paid Gregorio Basobas ₱500. For his failure to show any documentary proof to support his claim, the court cannot favorably consider the claim of Irineo Billion that he be compensated for ₱500."

There is no ground for reversing the conclusion of the lower court. Appellants themselves were not able to point out in their brief any specific evidence in support of their contention that the parcel of land in question was ever mortgaged by Juan Billion to Gregorio Basobas.

The appealed decision is modified in accordance with the conclusions we have arrived at in the body of this decision, and the lower court is ordered to proceed accordingly. No costs.

Parás, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Judgment modified, court a quo ordered to proceed accordingly.

[No. L-1137. November 4, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. BENJAMIN ABIBUAG, defendant and appellant

CRIMINAL LAW; MURDER; EVIDENCE; ACCUSED'S EVIDENCE OF GOOD CONDUCT.—Appellant's testimony in the hearing and his witnesses' testimonies as to his good conduct are without merit in the face of the overwhelming evidence presented by the prosecution which conclusively show his guilt.

APPEAL from a judgment of the Court of First Instance of Occidental Negros. Arellano, J.

The facts are stated in the opinion of the court.

Ramon C. Ditching for appellant.

Acting First Assistant Solicitor General Roberto A. Gianzon and Solicitor Felix M. Makasiar for appellee.

PERFECTO, J.:

As testified by Raymundo Lobaton, during an amateur contest which took place in the plaza of Sagay, Negros Occidental, on October 16, 1945, appellant Benjamin Abibuag and Patriotico Lobaton were engaged in a fight. Napoleon Rodriguez approached them for the purpose of separating them. Because they would not separate, Napoleon whipped appellant twice with a whip, and appellant ran away.

On November 13, 1945, at about 7 o'clock in the evening while taking supper in the house of Sabino Tan with three companions, Napoleon Rodriguez was shot in the head and died.

No one in the house saw who fired, but Florencio Trivobante testified that about 7:30 of the same evening, Abibuag went to his house, related to him that he got

some trouble while in the beach, and confessed having shot Napoleon Rodriguez, saying that he was a spy of the Japanese. He was carrying with him a carbine and stated as reason for his act the fact that he was whipped by Napoleon. Abibuag dismantled the carbine, wrapped it in a sack, and placed it in a corner under the house, and requested Tribotante to notify his parents regarding the incident.

When chief of police Ceferino Barredo arrested appellant, appellant made the admission appearing in Exhibit B, to the effect that when he saw Napoleon Rodriguez eating in a house he shot him with his carbine, because of the personal grudge due to the fact that about two weeks ago before the shooting, appellant was whipped and kicked by the deceased in the town plaza of Sagay. Because appellant had been laughed at, he decided to kill Napoleon to alleviate his humiliation.

On November 15, 1945, when appellant was brought before Eliseo Benetua, acting justice of the peace of Sagay, for preliminary investigation, because appellant was reluctant to answer, the complaint was read to him several times, and he admitted to have committed the offense on reasons for which he would not plead guilty.

Exhibit B was read at the preliminary investigation by the chief of police, but as accused seemed to be reluctant whether he would sign it or not, the justice of the peace advised him that it was his right to sign the document or not, and accused stated that he preferred not to sign it, but, as certified by the justice of the peace in Exhibit C shown by appellant, the accused admitted to have shot the deceased Napoleon Rodriguez, but pleaded not guilty of the offense charged.

The carbine, Exhibit D, used by the accused for shooting Napoleon Rodriguez was retrieved by the chief of police in the house of Florencio Tribotante, dismantled inside a sack, after the accused had admitted that he was the one who shot Napoleon Rodriguez with a carbine, and told the chief of police that he buried it somewhere in the cemetery of Sagay. The accused went with the chief of police and three policemen to the place where he allegedly had buried the carbine, but they found it finally in the house of Tribotante; the sack containing the dismantled carbine was buried under the ground. With the carbine the peace officers found magazines and bullets which are marked Exhibit D. Below the kitchen of the house where the shooting took place, the chief of police found an empty shell which is Exhibit F. He found it at exactly 7.12 p. m.

Appellant's testimony in the hearing and his witnesses' testimonies as to his good conduct are without merit in the face of the overwhelming evidence presented by the prosecution which conclusively show his guilt. In a way, Simeona Palma, one of the witnesses for the defense,

residing in the vicinity of the shooting, corroborated the prosecution when she testified that before the shooting, at four o'clock in the afternoon, she saw the accused going towards his house alone.

The lower court found appellant guilty of murder, with the aggravating circumstance of nocturnity and a mitigating circumstance of obfuscation and sentenced to *reclusión perpetua* and to pay the heirs of the deceased the amount of ₱2,000 and the costs.

There being no error in the lower court's decision, the judgment of the same is affirmed with costs against appellant.

Parás, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Judgment affirmed.

[No. L-2151. Noviembre 5, 1948]

HONESTO CORONEL Y ALEJANDRO BANDA, recurrentes, *contra* BIENVENIDO A. TAN, Juez de Primera Instancia de Rizal, LUCIO M. TANCO, Juez del Juzgado Municipal de la Ciudad de Rizal, EDUARDO M. GABRIEL, Shériff de la Ciudad de Rizal, y AGUSTÍN DEL ROSARIO, recurridos.

INTERDICTO PROHIBITORIO Y AVOCACIÓN; FALTA DE UTILIZAR EL RE-MEDIO APROPIADO A TIEMPO.—Los recurrentes han permitido, sin hacer uso de los remedios legales de que podían disponer, la ejecución de la orden del Juez Municipal de 8 de Abril de 1948 y por su abandono permitieron que la orden de sobreseimiento del Juzgado de Primera Instancia en el asunto de *certiorari e injunction* de 30 de Abril de 1948, haya quedado firme se declara: Que toda cuestión sobre la legalidad o no de la ejecución y la consiguiente responsabilidad civil que pudieran tener algunos de los recurridos ya es académica.

JUICIO ORIGINAL en el Tribunal Supremo. Inhibición y avocación.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Jorge A. Dolorfino y Angel V. Arigo en representación de los recurrentes.

D. Gobino S. Abaya en representación de los recurridos.

PABLO, M.:

Los recurrentes piden en una solicitud original de interdicto prohibitorio y avocación que este Tribunal declare nula y de ningún valor la orden de 8 de Abril de 1948 del juzgado municipal de la Ciudad de Rizal que dispone la demolición de sus casas y la orden de 17 de Marzo de 1948 del Juzgado de Primera Instancia de la provincia de Rizal que denegó la petición de un interdicto prohibitorio preliminar.

Los hechos son los siguientes: En las causas de desahucio Nos. 127, 128, 129, 130, 131, 133, 134 y 135 del Juzgado Municipal de la Ciudad de Rizal por convenio de las partes interesadas se dictó sentencia del tenor siguiente: "Que todos y cada uno de los demandados reconocen el derecho del demandante expuesto en las demandas y por consiguiente los demandados están dispuestos en desalojar el terreno del demandante, pero sujeto a esta condición que los demandados desalojaran el terreno del demandante en cuestión en o antes del 31 de Diciembre de 1947, sin que estos demandados tengan la obligación de pagar renta alguna hasta dicha fecha."

En 15 de Marzo de 1948, los recurrentes presentaron una solicitud de *injunction* y *certiorari* con una petición de interdicto prohibitario preliminar en el Juzgado de Primera Instancia (C. C. No. 463) para impedir la ejecución de la demolición de sus casas dispuesta por la orden del juzgado municipal de 13 de Febrero de 1948. La moción de interdicto fué denegada por el Hon. Juez Tan en 17 de Marzo de 1948 y otra moción enmendada del mismo tenor fué denegada en 19 del mismo mes.

En 8 de Abril de 1948, otra vez el juzgado municipal de la Ciudad de Rizal ordenó la demolición de las casas de los recurrentes y éstos pidieron la reconsideración de las órdenes de 17 y 19 de Marzo del Hon. Juez Tan, petición que fué denegada en 13 de Abril.

En 17 de Abril, los recurrentes presentaron en la escribanía de este Tribunal el presente recurso y a pesar de que se ordenó la expedición de un interdicto prohibitario preliminar bajo prestación previa de una fianza de ₱200, los recurrentes no han hecho nada; en 30 del mismo mes, el Juez del Juzgado de Primera Instancia de Rizal sobreseyó la causa No. 463 de interdicto prohibitario y avocación fundándose en que la segunda orden de demolición de las casas ya fué ejecutada por el shériff. Esta orden de sobreseimiento ha quedado firme. Cómo se puede impedir la ejecución de una orden ya previamente ejecutada? Por su propia desidia, los recurrentes han perdido ya su derecho, si alguna vez lo han tenido, de pedir una orden de interdicto.

Si hemos dado curso a la solicitud fué porque había alegaciones *prima facie* que justificaban la expedición de un interdicto prohibitario preliminar. Puesto que los recurrentes han permitido, sin hacer uso de los remedios legales de que podían disponer, la ejecución de la orden del Juez Municipal de 8 de Abril de 1948 y por su abandono permitieron que la orden de sobreseimiento del Juzgado de Primera Instancia en el asunto de *certiorari* e *injunction* de 30 de Abril de 1948, haya quedado firme, toda cuestión sobre la legalidad o no de la ejecución y la consiguiente responsabilidad civil que pudieran tener algunos de los recurrentes ya es académica.

Se sobresee la solicitud con costas.

Parás, Bengzon, Tuason, y Montemayor, MM., están conformes.

Moran, Pres., conforme en el resultado.

FERIA, J., dissenting and concurring:

I dissent from the *ratio decidendi* of the decision, but I concur in the dismissal of the petitioner's action.

This is not an action of injunction and certiorari, but of prohibition and certiorari, with a petition for preliminary injunction in order to preserve the status quo of the case during the pendency of the proceeding. The preliminary injunction was granted by this Court, but through the failure of the petitioner to file a bond in time the judgment of the respondent Municipal Judge of Rizal City was executed.

In deciding the merits of the case this Court dismisses the petition on the ground that the order of dismissal by the Court of First Instance of Rizal having become final, and the order complained of having been already executed, the execution of said order can no longer be enjoined or prohibited, and the petitioner has lost his right, if any, to secure a preliminary injunction.

The present action, not being an action of injunction nor of prohibition only, with which the decision seems to confuse, but also of certiorari on the ground that the respondent judge exceeded his jurisdiction in ordering the execution of the order complained of, the execution of said order did not necessarily abate the certiorari proceeding which seeks the annulment of said order, so that the petitioner may claim damages if he is entitled to any, from the other respondent. The decision is not therefore in accordance with law in dismissing the petitioner's action on the above-mentioned ground. The decision may be dismissed, however, on a different ground.

The petitioner had originally filed a special civil action of certiorari and prohibition with the Court of First Instance of Rizal against the Municipal Judge of Rizal City, and the said Court of First Instance dismissed the petition. But the petitioner, instead of appealing from the decision of this Court, has filed the present original action of certiorari and prohibition.

The law does not allow the filing of two original special civil actions, one with the Court of First Instance and another with the Supreme Court, which has concurrent jurisdiction with the former to take cognizance of such an action, as we have already held in several cases decided by this Court. And the reason is that, otherwise, the party may proceed with the case in the court which has rendered or may render a decision favorable to him, and dismiss the other, or both courts may render two contra-

dictory decisions. The only proper step for the petitioner to have taken in the present case was to appeal from the decision of the Court of First Instance.

The petition is therefore dismissed with costs. So ordered.

PERFECTO and BRIONES, JJ.:

We concur in this opinion.

Se sobresee la solicitud.

[No.-49066. November 5, 1948]

RITA GARCHITORENA VDA. DE CENTENERA, petitioner, *vs.* THE DIRECTOR OF LANDS ET AL., oppositors; HERMOGENES P. OBIAS ET AL., oppositors and appellees; MARIANO GARCHITORENA, movant and appellant.

1. REGISTRATION OF LAND; AMENDATORY ORDER AS PART OF JUDGMENT.—The amendatory order in this case is undoubtedly an essential part of the judgment.
2. ID.; IDENTITY OF THE LAND.—There could not be any doubt as to the identity of land, because the same was clearly delimited and pointed out in the original plan PSU-66063, Exhibit H, which was filed by R. G. with her application for registration, and said original plan was accessible to all the parties from the very beginning of the proceedings until the original decision was rendered on May 14, 1931, until the amendatory order was issued on July 28, 1931, and until the Supreme Court promulgated its decision on March 4, 1933.
3. ID.; CONFLICT BETWEEN AREA AND BOUNDARIES.—It is elemental that when there is a conflict between the area and the boundaries of a land, the latter prevails.
4. ID.; TITLE TO LAND ISSUED ONLY TO OWNER IN FEE SIMPLE.—Appellant M. G. has absolutely no right to have a title issued in his favor on a land that does not belong to him. He has no right to profit by any error as to the area of the adjoining lands. The fact that the area given to the land claimed by O was about 300 hectares, when the whole land enclosed within the disputed boundaries is around 800 hectares, does not entitle M. G. to have the difference of about 500 hectares, by going beyond the boundary line enclosing his own land and encroaching upon the one belonging to the State and claimed by O, as lessee.

APPEAL from an order of the Court of First Instance of Camarines Sur. Angeles David, J.

The facts are stated in the opinion of the court.

Claro M. Recto and Jose Ma. Recto for movant-appellant.
Jose M. Peñas for appellee H. P. Obias.

PERFECTO, J.:

Mariano Garchitoren has acquired the ownership of a large area of land in Caramoan, Camarines Sur, title to which was applied to be registered in her name by Rita Garchitoren, Vda. de Centenera, as heiress of her father Andres Garchitoren, its former owner.

The order of Judge Pablo Angeles David, issued on June 28, 1941, against which Mariano Garchitorena prosecuted this appeal, is closely related to the decisions rendered by the Court of First Instance of Camarines Sur and this Supreme Court in the land registration case, commenced by Rita Garchitorena to secure title in her name over the large area of land in Caramoan which, according to the original plan Psu-66063, comprises 27,707,760 square meters.

The decision of the Court of First Instance of Camarines Sur was rendered on May 14, 1931. The same court amended it before it was appealed to the Supreme Court in an order dated July 28, 1931. The decision of the Supreme Court was promulgated on March 4, 1933. (58 Phil., 21-26.)

The dispositive part of the decision of the trial court dated May 14, 1931, is as follows:

"Por todo lo arriba expuesto, se dicta sentencia estimando las oposiciones presentadas por el Director de Terrenos, Hermógenes P. Obias, Ramon y José Alvarez y Januario Alferez, y los otros opositores de apellidos Garchitorena y todo de acuerdo con los términos de esta decisión desestimándose también la oposición del Director de Montes y previa enmienda del plano por la que se excluya por la solicitante las porciones pertenecientes a dichos opositores cuyas oposiciones han prosperado y de acuerdo con los términos de esta decisión, se decreta la adjudicación y registro del terreno a favor de la solicitante Rita Garchitorena Vda. de Centenera sujeta a los siguientes gravámenes a saber:

"(a) A favor de Mariano Garchitorena por cesión del Banco Nacional Filipino la suma de ₱5,500 con intereses al 10 por ciento anual desde el 31 de Marzo de 1921 hasta su completo pago.

"(b) A favor de Flor de Garchitorena y Marcel de Garchitorena la suma de ₱5,017.39 con sus intereses al 6 por ciento anual desde el 1º de Octubre de 1924 hasta su completo pago.

"(c) A favor de Li Seng Giap la suma de ₱2,569.71 mas que sus intereses al 10 por ciento anual desde el 30 de Septiembre de 1921 hasta su completo pago.

"Se sobresee la demanda entablada en la causa civil No. 4783 absolviendo a la demandada Doña Rita Garchitorena sin pronunciamiento alguno en cuanto a las costas.

"Así se ordena.

"Dada en Naga, Camarines Sur, hoy a 14 de Mayo de 1931.

"(Fdo.) C. M. VILLAREAL"

The application of Rita Garchitorena was accompanied by the original plan, PSU-66063, Exhibit H, where the land claimed by appellee Hermogenes P. Obias appears to be clearly marked by the surveyor as "Claimed by H. P. Obias under L. A. No. 2782."

In his opposition, Obias pointed specifically to said part of the land as the one he is claiming under his lease application No. 2782, filed with the Bureau of Lands, praying that the application of Rita Garchitorena be denied as to said land.

On July 21, 1931, the following motion was filed in the case:

"Comes now the undersigned attorney on behalf of the Director of Lands and respectfully represents to this Honorable Court:

"I. That a copy of the decision in the above-entitled case was received by the undersigned for the Director of Lands on July 18, 1931;

"II. That while in paragraph five of the decision referred to it states: ' * * * la porción arrendada por el del Gobierno antes referida (que es toda la porción indicada en el plano Exhibit H desde la punta de Tinawagan al Norte hasta la línea que aparece en el plano desde Casisihan hasta Gobgob) * * *', es un terreno público no ocupado por nadie * * *', in paragraph six it reads: ' * * * Considerando que el terreno tal como fue medido para fines de registro excede ya en muchos cientos de hectáreas sobre su extensión superficial expresada en el título posesorio Exhibit B la Corte estima que el terreno arrendado por el Gobierno al opositor Hermogenes P. Obias fué en efecto indebidamente comprendido dentro del plano de la solicitante, pero que su extension, sin embargo, no es ya de 800 hectáreas como se pretende por este opositor sino de 300 hectáreas solamente tal como consta en la solicitud de arrendamiento Exhibit 7, * * *';

"III. That the terms above-quoted are inconsistent with each other, for while in paragraph six the area of the public land is limited to 300 hectares, in paragraph five the limits stated that is, from Point Tinawagan to Gobgob, comprise more than 800 hectares according to computation.

"Wherefore, the undersigned prays that the terms of the decision with respect to the limits of the portion declared public lands be clarified by making reference to the number of the corners shown on the plan Exhibit H in order that the Director of Lands may properly decide whether to appeal or not, and also in order to facilitate the amendment of the said plan should the decision become final or confirms in case of appeal."

Consequently, on July 28, 1931, the following amendatory order was issued:

"Considerada la moción presentada por el abogado especial del Ború de Terrenos de fecha 21 del actual y en vista también de la conformidad de las partes interesadas, se enmienda la parte que está entre parentesis de la página 3 de la decisión, de tal modo que diga: 'Que es toda la porción indicada en el plano Exhibit H desde la punta de Tinawagan al norte hasta la línea que aparece en el plano desde Gobgob hasta Carirohan.'

The land claimed by Obias, in his opposition against Rita Garchitorena, as can be seen in said opposition, in the original plan PSU-66063, Exhibit H, and in the amendatory order of July 28, 1931, appears to be enclosed within clearcut boundaries: the sea in the north, east and west, and in the south by a straight line running from Gobgob creek to Carirohan creek. In some parts of the record Carirohan is mistakenly written as Casisihan. The "Punta de Tinawagan" mentioned in the amended amendatory order, refers to the pointed tip in the northern end of the land.

On June 20, 1948, Mariano Garchitorena filed a motion praying for the approval of sub-division plan Psu-66063-Amd, that decrees be issued so that the titles on lots Nos. 2, 3, and 4 of the original plan Psu-66063 and lots Nos.

1, 5, 6, 7, and 8 of the sub-division plan Psu-66063-Amd be issued in his name.

He alleged that on May 14, 1931, the lower court rendered judgment ordering issuance of titles to Rita Garchitorenas as heires of her deceased father Andres Garchitorenas on four lots, with the exception of the following:

(a) Part of lot No. 1, measuring about 500 hectares, as being the property of Ramon and Jose Alvarez;

(b) Part of lot No. 1, of about 300 hectares, as being public land;

(c) Part of lot No. 1, of about 18 hectares, as being the property of Hermogenes P. Obias; and

(d) Part of lot No. 1, of about 24 hectares, for being the property of Januario Alferez and the rest as public land which the same Alferez applied for as homestead. The lots to be registered in the name of Rita Garchitorenas were subject to liens in favor of Mariano Garchitorenas and other creditors.

The Supreme Court modified the judgment by declaring that the properties ordered to be registered in the name of Rita Garchitorenas belong to Andres Garchitorenas and reserving to his administrator and creditors the right of action under sections 712 and 713 of the Code of Civil Procedure.

Accordingly, Mariano Garchitorenas and brothers brought an action against Rita Garchitorenas, wherein decision was rendered ordering her to deliver the possession of all the lots in question to the administrator of the intestate of Andres Garchitorenas to be applied to the payment of pending debts of the deceased.

On September 7, 1935, the administrator Jose M. Garchitorenas sold at public auction the lots in question in favor of Mariano Garchitorenas for the price of ₱28,745.93. The sale was approved by the lower court on April 26, 1940.

At the time the motion of June 20, 1940, was filed by Mariano Garchitorenas, no decree for the issuance of the corresponding certificates of titles has yet been issued because the order of sub-division to segregate the portions adjudicated to the oppositors has not yet been complied with.

On April 27, 1939, Mariano Garchitorenas bought the 500 hectares ordered excluded as belonging to Ramon and Jose Alvarez.

Mariano Garchitorenas alleged that in sub-division plan PSU-66063-Amd the portions of oppositors to be segregated are indicated as follows:

(a) The 500 hectares belonging to Ramon and Jose Alvarez are segregated as lots 1, 6, and 7;

(b) The 300 hectares to be segregated as public land are identified as lot No. 9;

(c) The portion of 18 hectares belonging to Hermogenes is identified as lot No. 10;

(d) The lot of 24 hectares as belonging to Januario Alferez and the rest applied for by him as homestead appear to be the unnumbered lot appearing at the southeast of the plan;

(e) The remainder of lot No. 1 of the original plan Psu-66063, after the segregations ordered by the court, is comprised within lots Nos. 6 and 8.

Lots Nos. 2, 3, and 4 of the original plan had not suffered any alteration and are designated by the same number in the amended plan.

On July 30, 1940, Hermogenes P. Obias and others filed objections to the motion of Garchitorena.

On September 15, 1940, Mariano Garchitorena filed a reply.

The Director of Lands filed on July 24, 1940, an opposition upon the following grounds:

1. Because the sub-division plan Psu-66063-Amd does not comply with the terms and conditions of the original decision of the lower court dated May 14, 1931, or the decision on appeal of the Supreme Court promulgated on March 4, 1933.

2. Because Mariano Garchitorena is not entitled to registration in his name within the same case of the portions claimed by Ramon and Jose Alvarez.

Mariano Garchitorena filed on August 14, 1940, a reply to the opposition of the Director of Lands.

On June 28, 1941, the lower court issued an order for the amendment of plan Psu-66063-Amd, so that the portion claimed by Hermogenes P. Obias should duly be represented, in accordance with the amendatory decision of the lower court and affirmed by the Supreme Court, and that once the amendment is made, the title be issued in favor of Mariano Garchitorena on lots 2, 3, and 4 of the original plan Psu-66063, on lots 6 and 8 of the sub-division plan Psu-66063-Amd and on lots 1, 6, 7 of the same sub-division plan, and that title be issued in favor of Hermogenes P. Obias on lot No. 10 of the sub-division plan Psu-66063-Amd.

On July 24, 1941, Mariano Garchitorena filed a motion for reconsideration which was denied on October 3, 1941.

In his appeal, Mariano Garchitorena made four assignments of error, although the whole controversy can be reduced to a single question.

According to appellant, the instant controversy hinges on the opposition of Hermogenes P. Obias. He complains against the order of June 28, 1941, of the Court of First Instance of Camarines Sur, for the amendment of plan Psu-66063-Amd, in such a way that the portion claimed by Hermogenes P. Obias be duly represented in accordance

with the amendatory decision of said court and affirmed by the Supreme Court.

According to the statement of facts of appellant, the trial court rendered judgment on May 14, 1931, upholding the oppositions of the Director of Lands, Hermogenes P. Obias, Ramon and Jose Alvarez, and Januario Alferez against the application of Rita Garchitorena. Referring to the opposition of Hermogenes P. Obias, the trial court said the following: "the portions claimed by the oppositor, that is, the portion he leased from the government above referred to (which is the whole portion indicated in plan Exhibit H from the point of Tinawagan in the north up to the line which appears in the plan from Casisihan up to Gobgob)"; it said further that "considering that the land as measured for registration purposes exceeds in many hundreds of hectares the area appearing in possessory title Exhibit B, the court concludes that the land leased by the government to oppositor Hermogenes P. Obias was in effect unduly included within the plan of applicant, but its area, notwithstanding, is not more than 800 hectares as it appears in the lease application Exhibit 7."

On July 28, 1939, upon motion of the Bureau of Lands asking the court to describe the corners and boundaries of the portion of the land held to have been leased to Obias by the government, the lower court issued an order amending the portion of the original decision containing the description of what Obias claimed, saying: "considering the motion filed by the special attorney of the Bureau of Lands dated on the 21st instant and in view also of the conformity of the interested parties, that part (in page 3 in the decision referred to) is amended so as to read as follows: 'which is all the portion indicated in plan Exhibit H from the point of Tinawagan in the north up to the line which appears in the plan from Gobgob to Carirohan.' Rita Garchitorena appealed to the Supreme Court, which, on March 4, 1933, handed down its decision reported in 58 Phil., 21.

With reference to the portion claimed by Hermogenes P. Obias, the Supreme Court said:

"Hermogenes P. Obias stated that some 800 hectares belong to him as part of the land in question, but it seems quite clear that he had only 300 hectares as appears in the application for a lease given him by the Director of Lands, and the court below holds that the land leased by the government to the opponent Hermogenes P. Obias is unduly included in the government's plan." (58 Phil., 22.)

Hermogenes P. Obias claims that he is entitled to the 800 hectares comprised within the lots Nos. 1, 5, 6, 7, 8, and 9 of subdivision plan Psu-66063-Amd, alleging that said subdivision is not in conformity with the court's decision of May 14, 1931, as amended and with the Supreme Court decision on appeal of March 4, 1933.

In support of his first two assignments of error, appellant contends that the original decision awarding Obias 300 hectares by way of lease was not amended so as to award to him 800 hectares instead. In support of this theory, appellant advances the following propositions:

First, that the so-called amendatory order of July 28, 1931, expressly referred only to that portion (of the original decision) describing and reciting the extent of Obias' claim, and said order did not affect the dispositive portion of said decision.

Second, that the above mentioned dispositive portion, awarding only 300 hectares to Obias by way of lease, was in no manner altered by the lower court or by the Supreme Court.

Third, that the express holding, both by the lower court and the Supreme Court, in respect of Obias' claim for damages allegedly done to his cattle, is sufficient proof that Obias is entitled only to 300 hectares.

In support of the above propositions, appellant contends that there is nothing in the terms of the order of July 28, 1931, from which it may be inferred that it adjudicated anything to Obias, adding that, whether it is true that the court ordered an amendment of some sort, said amendment expressly referred to that part (which was nothing but the recital of the claim of Obias to what was adjudicated to him), and this precisely was the reason why no objection was interposed by the interested parties. The amendment has been made upon motion of the Director of Lands praying that the portion claimed by Obias "be described as to its corners and boundaries." Appellant emphasizes that even considering for the sake of argument that the court based its judgment upon said description, the adjudication would still control for the reasoning of the court in rendering a judgment forms no part of a judgment as regards its conclusive effect.

After a careful consideration of the question raised by appellant, we are constrained to conclude that his appeal is groundless. His whole theory is based on the statements made in the original decision of the trial court and in the decision of the Supreme Court to the effect that the land claimed by Obias was about three hundred hectares, the statements being based on the fact that such is the area given in the lease application filed by Obias with the Bureau of Lands. But such statements cannot prevail over the clear description made in the amendatory order of July 28, 1931, enclosing clearly the land within the sea surrounding its three sides and a straight line running from Gobgob creek to Carirohan creek.

Said amendatory order is, undoubtedly, an essential part of the judgment of May 14, 1931, upholding several opposition to the application of Rita Garchitorena, among them that of Hermogenes P. Obias.

The dispositive part of the original decision does not describe the land claimed by Obias, but that omission is filled up by the description made in the amendatory order of July 28, 1931. There could be no question in the minds of all the parties concerned, including applicant Rita Garchitorena, from whom Mariano Garchitorena derived his rights, as to the identity of the land claimed by Obias, and that is the reason why the amendatory order of July 28, 1931, was issued with the conformity of all the parties.

There could not be any doubt as to the identity of said land, because the same was clearly delimited and pointed out in the original plan PSU-66063, Exhibit H, which was filed by Rita Garchitorena with her application for registration, and said original plan was accessible to all the parties from the very beginning of the proceedings until the original decision was rendered on May 14, 1931, until the amendatory order was issued on July 28, 1931, and until the Supreme Court promulgated its decision on March 4, 1933. The same land as appears in said plan Exhibit H as claimed by Obias is specifically pointed out by Obias in his written opposition.

It is elemental that when there is a conflict between the area and the boundaries of a land, the latter prevails.

Appellant Mariano Garchitorena has absolutely no right to have a title issued in his favor on a land that does not belong to him. He has no right to profit by any error as to the area of the adjoining lands. The fact that the area given to the land claimed by Obias was about 300 hectares, when the whole land enclosed within the disputed boundaries is around 800 hectares, does not entitle Mariano Garchitorena to have the difference of about 500 hectares, by going beyond the boundary line enclosing his own land and encroaching upon the one belonging to the State and claimed by Obias, as lessee.

The error as to the area of the land claimed by Obias is explained by the fact that said land has not yet been of the land when he filed his lease application with the Bureau of Lands. That underestimation of the area is no legal ground for Mariano Garchitorena to enrich himself gratuitously with 500 hectares at the expense of the State and Obias.

The appealed order, dated June 28, 1941, is affirmed.

Moran, C. J., Feria, Briones, and Tuason, JJ., concur.

PABLO, M., concurrente:

Concurro con la opinión de la mayoría en cuanto confirma la orden del Juzgado de Primera Instancia de 28 de Junio de 1941, pero no estoy conforme con algunos de sus pronunciamientos.

En mi concepto, la cuestión se reduce a lo siguiente: qué debe excluirse del terreno cuyo registro se pide, son

300 hectáreas solamente o todo el terreno que está dentro de la descripción siguiente: "Toda la porción indicada en el plano Exhibít H desde la punta de Tinawagan al norte hasta la línea que aparece en el plano desde Gobgob hasta Carirohan"?

El Juzgado de Primera Instance en 28 de Julio de 1931 dictó una orden del tenor siguiente: "Considerada la motion presentada por el abogado especial del Buró de Terrenos de fecha 21 del actual y en vista también de la conformidad de las partes interesadas, se enmienda la parte que está entre paréntesis de la página 3 de la decisión, de tal modo que diga: 'Que es toda la porción indicada en el plano Exhibít H desde la punta de Tinawagan al norte hasta la línea que aparece en el plano desde Gobgob hasta Carirohan.'" Entre estos dos puntos se trazó una línea en lápiz rojo. Hermógenes P. Obias, como arrendatario, reclama toda esta porción y el Director de Terrenos la reclama también porque es del Estado, y arrendada por Obias. Porque éste solicitó del Buró de Terrenos el arrendamiento de 300 hectáreas además de hacer constar los linderos, el apelante contiene que no debe excluirse del terreno más que una porción de 300 hectáreas y no todo el terreno ya delimitado más arriba. Esta contención es insostenible. Lo que importa en el caso presente es la descripción del terreno, que es *un cuerpo cierto*, y no su cabida. (*Tiran contra Villanueva Vda. de Riosa*, 56, Jur. Fil., 736.) Lo que determina un terreno, no es la extensión superficial poco más o menos calculada que se menciona en la descripción, sino los linderos expresados en la misma. Cuando en 28 de Junio de 1941, dictó el Juzgado su orden disponiendo la enmienda del plano Psu-66063-Amd, para que se especifique de una manera técnica la porción reclamada por el Director de Terrenos y Hermógenes P. Obias, de acuerdo con su orden de 28 de Julio de 1931 enmendando su decisión de 14 de Mayo de 1931, no ha hecho más que hacer cumplir su orden y a final y ejecutoria (de 28 de Julio de 1931), y de acuerdo con las disposiciones de la Ley de Registro para la definitiva terminación de toda controversia sobre el terreno.

Por tanto, debe excluirse del terreno cuyo registro se pide la porción delimitada por la descripción ya transcrita y no 300 hectáreas solamente.

PARÁS, J., dissenting:

In a registration case instituted by Rita Garchitorena, wherein the Director of Lands, Hermogenes P. Obias and others severally filed oppositions, the Court of First Instance of Camarines Sur rendered a decision on May 14, 1931, which, in so far as it is pertinent to the present appeal, reads as follows:

"La controversia entre la solicitante y el Director de Terrenos y Hermógenes P. Obias.—Esta constituye una de las principales controversias en este expediente.

"Según las pruebas de la solicitante, todo el terreno objeto de la solicitud que claramente comprende todas las porciones de terreno reclamadas por el opositor Hermógenes P. Obías en gran parte, en calidad de arrendamiento del Gobierno y en una pequeña porción, como propiedad privada, estaban en la posesión primeramente de su padre, el finado Don Andrés Garchitorena quien tenía a su nombre el título posesorio Exhibít B desde el tiempo del Gobierno Español y que una mitad de este terreno fué adquirido por la solicitante en compra de su mismo padre hacia el año 1918 según el Exhibít A y la otra mitad fué adquirida por la misma solicitante en concepto de herencia de su citado padre al fallecimiento de éste el año 1921, y que ambas posesiones, esto es, tanto la de la solicitante así como la de su antecesor Don Andrés Garchitorena fueron en concepto de dueños, y de una manera pacífica, continuada y adversa.

Pero de acuerdo con la prueba del Director de Terrenos y Hermógenes P. Obias, aunque se admite que en gran parte el terreno objeto de la solicitud fué ocupada o poseída primero por el difunto Don Andrés Garchitorena, sin embargo, las porciones arrendadas por él del Gobierno antes referida (que es toda la porción indicada en el plano Exhibít H desde la punta de Tinawagan al Norte hasta la línea que aparece en el plano desde Casisihan hasta Gobgob) y la otra porción que el reclama, jamás estuvieron en la posesión tanto de la solicitante como del finado Don Andrés Garchitorena, sino que la primera porción es un terreno público no ocupado por nadie y la segunda es una porción de unas 18 hectáreas que desde el 1904 ya estaba en posesión de un tal Isidro Trías, y después, pasó por venta a la posesión del Chino José Reyes Lim Coco y de este paso al opositor Obías según el Exhibít 2—Obías.

"Considerando que el terreno tal como fué medido para fines de registro excede ya en muchos cientos de hectáreas sobre su extensión superficial expresada en el título posesario Exhibít B la corte estima que el terreno arrendado por el Gobierno al opositor Hermógenes P. Obías fué en efecto indebidamente comprendido dentro del plano de la solicitante, pero que en extensión, sin embargo, no es ya de 800 hectáreas como se pretende por este opositor sino de unas 300 hectáreas solamente tal como consta en la solicitud de arrendamiento Exhibít 7 y que en cuanto a la otra porción de 18 hectáreas circundada con lápiz rojo en el plano Exhibít H y marcada No. 27 en dicho plano, las pruebas son suficientes para establecer que esta porción fué adquirida por prescripción o posesión adversa por más de 10 años de conformidad con las disposiciones del Artículo 41 del Código de Procedimiento Civil de parte del vendedor del opositor Obías según su Exhibít 2—Obías y que, por tanto, de esta porción de 18 hectáreas el opositor Obías debe ser declarado como su dueño.

"En cuanto a los daños reclamados por el opositor Sr. Obías en la causa civil No. 4783 entre él y la solicitante, tal como resulta ahora, no hay base legal suficiente para la reclamación de aquellos daños, por la falta de precisión en las pruebas sobre si los vacunos fueron echados de este radio de 300 hectáreas o dentro de las 500 hectáreas de más que reclama el opositor y que justamente según los términos de esta decisión están comprendidos dentro del terreno comprendido en el título posesorio Exhibít B y que, por esta razón, la reclamación debe ser sobreseída.

* * * * *

Por todo lo arriba expuesto, se dicta sentencia estimando las oposiciones presentadas por el Director de Terrenos, Hermógenes P. Obias, Ramón y José Alvarez y Januario Alferez, y los otros opositores de apellidos Garchitorena y todo de acuerdo con los términos de esta decisión desestimándose también la oposición del Director de Montes y previa enmienda del plano por la que se excluya

por la solicitante las porciones pertenecientes a dichos opositores cuyas oposiciones han prosperado y de acuerdo con los términos de esta decisión, se decreta la adjudicación y registro del terreno a favor de la solicitante Rita Garchitorena Vda. de Centenera sujeta a los siguientes gravámenes a saber:

* * * * *

"Se sobresee la demanda entablada en la causa civil No. 4783 absolviendo a la demandada Doña Rita Garchitorena sin pronunciamiento alguno en cuanto a las costas."

On July 21, 1931, the Director of Lands filed a motion praying that "the terms of the decision with respect to the limits of the portion declared public lands be clarified by making reference to the number of the corners shown on the plan Exhibit H. On July 28, 1931, the Court of First Instance of Camarines Sur issued an order worded as follows:

"Considerada la moción presentada por el obogado especial del Buró de Terrenos de fecha 21 del actual y en vista también de la conformidad de las partes interesadas, se enmienda la parte que está entre paréntesis de la página 3 de la decisión, de tal modo que diga. ('Que es toda la porción indicada en el plano Exhibit H desde la punta de Tinawagan al Norte hasta la línea que aparece en el plano desde Gobgob hasta Casirohan.')

Rita Garchitorena had appealed to the Supreme Court which, on March 4, 1933, rendered a decision reading, in the portions relevant to the present appeal, as follows:

"Hermogenes P Obias stated that some 800 hectares belonged to him as part of the land in question, but it seems quite clear that he had only 300 hectares as appears in the application for a lease given by the Director of Lands, and the court below holds that the land leased by the Government to the opponent Hermogenes P. Obias is unduly included in the Government's plan. Another portion of 18 hectares was acquired by prescription of adverse possession for over ten years in accordance with the provisions of section 41 of the Code of Civil Procedure by a person who sold the portion to Obias, and therefore Obias must be declared owner of the said 18 hectares.

"As to the damages claimed by Hermogenes P. Obias in civil case No. 36385 between himself and Rita Garchitorena, so far as the matter appears, there is not sufficient legal ground therefor, since the evidence did not definitely show whether there was any damage of importance done to the cattle found in the three hundred hectares.

** * * * **"

"The appealed decision will be entered upholding the herein oppositions filed by the Director of Lands, Hermogenes P. Obias (18 hectares), Ramon and Jose Alvarez (500 hectares), and Januario Alferez (24 hectares), all in accordance with the terms of said decision, and after amendment of the plan PSU-660633 so as to exclude the portions of land pertaining to said opponents, the remaining portions shall be registered in the name of the said applicant, Rita Garchitorena Vda. de Centenera." (58 Phil., 21, 22-23, 26.)

On June 20, 1940, Mariano Garchitorena—who had in the meantime acquired the right and interest of Rita Gar-

chitorena and Ramon and Jose Alvarez as adjudged in the decision of the Court of First Instance of Camarines Sur of May 14, 1931, and in the decision of the Supreme Court of March 4, 1933,—filed a petition in the Court of First Instance of Camarines Sur for the registration of all the land thus acquired by Mariano Garchitorena after segregating the portions awarded to the various oppositors, among whom was Hermogenes P. Obias and the Director of Lands. To said petition, Hermogenes P. Obias interposed an objection on the ground that, in the amended subdivision plan attached to the petition, the portion alleged to have been declared public land and which was leased to Hermogenes P. Obias, was represented as containing only 300 hectares, in violation of the decision of May 14, 1931, (Court of First Instance of Camarines Sur) and March 4, 1933, (Supreme Court) under which said portion is alleged to contain some 800 hectares, the area included within the boundaries specified in said decisions. This contention of Hermogenes P. Obias was sustained by the Court of First Instance of Camarines Sur in its order of June 28, 1941, from which the present appeal has been prosecuted by Mariano Garchitorena.

The fundamental question that arises is, what is the area of the portion adjudged to be public land and held in lease by Hermogenes P. Obias which was ordered excluded from the larger tract awarded to Rita Garchitorena (predecessor in interest of Mariano Garchitorena)? It is my firm conviction that said area is only 300 hectares. This is plainly to be drawn from the specific pronouncement in the decision of May 14, 1931, that "Considerando que el terreno tal como fue medido para fines de registro excede ya en muchos cientos de hectáreas sobre su extensión superficial expresada en el título posesorio Exhibít 'B' la corte estima que el terreno arrendado por el Gobierno al opositor Hermógenes P. Obias fué en efecto indebidamente comprendido dentro del plano de la solicitante, pero que en extensión, sin embargo, no es ya de 800 hectáreas como se pretende por este opositor sino unas 300 hectáreas solamente tal como consta en la solicitud de arrendamiento Exhibit 7." This is a definite pronouncement and adjudication that cannot be affected by and should prevail over the passage in the decision, relied upon by Hermogenes P. Obias, namely:

Pero de acuerdo con la prueba del Director de Terrenos y Hermógenes P. Obias, aunque se admite que en gran parte el terreno objeto de la solicitud fué ocupada o poseida primero por el difunto Don Andrés Garchitorena, sin embargo, las porciones reclamadas por este opositor, este es la porción arrendada por él del Gobierno antes referida (que es toda la porción indicada en el plano Exhibit 'B' desde la punta de Tinawagan al Norte hasta la línea que aparece en el plano desde Casisihan hasta Gobgob) y la otra porción que él reclama, jamas estuvieron

en la posesión tanto de la solicitante como del finado Don Andrés Garchitoren, * * *.

First, because the clause within the parenthesis merely refers to the entire portion claimed by oppositor Hermogenes P. Obias, as clearly expressed by the preceding "*las porciones reclamadas por este opositor*," and, secondly, because such recital is followed, in the succeeding paragraph, by the specific factual conclusion "*pero que en extensión, sin embargo, no es ya de 800 hectáreas como se pretende por este opositor sino de unas 300 hectáreas solamente.*" The entire portion claimed is one thing, and the portion actually adjudicated is another. No amount of word juggling can serve to prove that they are the same. If the clause within the parenthesis was intended to fix the area of the portion awarded to Hermogenes P. Obias, there was no sense in further inserting the explicit limitation that the area was not 800, but only 300, hectares.

I cannot see how, as contended in behalf of Hermogenes P. Obias, the order of the Court of First Instance of Camarines Sur of July 28, 1931, could have substantially amended or altered its decision of May 14, 1931, in a way favorable to Obias, the only change suggested in said order consisted in the fact that the terms "desde Casirohan hasta Gobgob" found in clause within the parenthesis was made to read "desde Gobgob hasta Casisihan." It should be recalled that the Director of Lands, in his motion of July 21, 1931, already admitted that the area of the land covered by the boundaries mentioned in the original clause within the parenthesis was more than 800 hectares. Here are the exact words of the motion:

"That the terms above-quoted are inconsistent with each other, for while in paragraph six the area of the public land is limited to 300 hectares, in paragraph five the limits stated that is, from Point Tinawagan to Gobgob, comprise more than 800 hectares according to computation."

The Director of Lands had thus called the attention of the Court of First Instance of Camarines Sur to the alleged inconsistency between the area included in the limits fixed by the original clause within the parenthesis and the conclusion "*pero que en extensión, sin embargo, no es ya de 800 hectáreas como se pretende por este opositor sino de unas 300 hectáreas solamente.*" And yet, quite obviously, that court allowed that inconsistency to remain. In other words, the situation is this: Both under the original and under the amended clause within the parenthesis, the area purporting to be comprised within the limits therein mentioned is some 800 hectares. As the area actually adjudicated as public land (300 hectares) remained unaltered notwithstanding the motion of the Director of Lands of July 21, 1931, and the order of July 28, 1931, said adjudication should control, especially where, as herein before stated, the clause within the parenthesis was

a mere recital of the allegation of Hermogenes P. Obias. It is manifest that no objection was interposed by the parties to the motion of the Director of Lands of July 21, 1931, because the latter merely prayed for a clarification of the limits of the portion declared public land, without insisting that said portion ought to be 800 hectares.

That the sense of the decision of May 14, 1931, was to award to Obias only 300 hectares is confirmed by the circumstance that the Court of First Instance of Camarines Sur disallowed Obias' claim for damages "por la falta de precisión en las pruebas sobre si los vacunos fueron echados de este radio de 300 hectáreas o dentro de las 500 hectáreas de más que reclama el opositor y que justamente según los términos de esta decisión estan comprendidos dentro del terreno comprendido en el título posesorio Exhibít "B." If further support is necessary, it is sufficient to refer to the decision of the Supreme Court of March 4, 1933, in which the following categorical pronouncement was made: "Hermogenes P. Obias stated that some 800 hectares belonged to him as part of the land in question, but it seems quite clear that he had only 300 hectares as appears in the application for a lease given him by the Director of Lands."

The rule that where there is a conflict between the area and the boundaries, the latter must prevail, cannot be invoked, for the simple reason that the area herein involved was a plain matter of adjudication, and was not intended merely as a description.

I vote to reverse the appealed order by directing the exclusion from the title sought by Mariano Garchitorena an area of only 300 hectares as being public land held in lease by Hermogenes P. Obias.

BENGZON, J.:

I concur in the above dissent.

Order affirmed.

[No. L-1793. November 9, 1948]

JOSE ABAYA, petitioner, vs. ALEJANDRINO A. ALVEAR,
respondent

PUBLIC OFFICERS; ABANDONMENT OF OFFICE BY ACCEPTANCE OF ANOTHER; RULE DURING ABNORMAL CONDITIONS.—Because of the abnormal conditions obtaining in Ilocos Sur, particularly the towns of Cervantes and Angaki during the war, there is reason to believe that the changing of the original circuit occupied by petitioner A by eliminating therefrom the town of Angaki, was a mere temporary expedient to meet the exigencies of the administration of justice in that area, under abnormal conditions, and that his acceptance of the new post did not involve or entail abandonment of his old position. The doctrine laid down in the case of Teves vs. Sindiong (G. R. No. L-2050, October 21, 1948), applied and reiterated.

ORIGINAL ACTION in the Supreme Court. *Quo warranto.*

The facts are stated in the opinion of the court.

Eulalio Resurreccion for petitioner.

First Assistant Solicitor General Roberto A. Guianzon
and *Solicitor Martiniano P. Vivo* for respondent.

MONTEMAYOR, J.:

There is no dispute as to the following facts: The petitioner Jose Abaya now sixty-one years of age and a member of the Bar, was on October 9, 1920 appointed to the post of justice of the peace of the towns of Cervantes, Angaki, Concepcion and San Emilio, Province of Ilocos Sur and he qualified for the position and discharged the duties thereof. In 1923, the municipalities of Concepcion and San Emilio were excluded from his territorial jurisdiction and he continued to discharge his judicial functions as justice of the peace of Cervantes and Angaki up to December 31, 1941, a few days before the Japanese occupation forces arrived in the town of Cervantes. On April 17, 1943, said petitioner was given an appointment as justice of the peace of Cervantes only, by Jorge B. Vargas, chairman of the "Philippine Executive Commision." Then on May 1, 1944, Jose P. Laurel as "President of the Republic of the Philippines" extended to him another appointment as justice of the peace of the same town of Cervantes, Ilocos Sur. Abaya evidently accepted these appointments made during the Japanese occupation and continued to discharge his judicial functions as justice of the peace but only for the town of Cervantes, until the month of November, 1944 when, because of the threat of military clashes between Japanese forces on one side and the Filipino guerrillas on the other, he left his post and fled to the mountains for safety.

After liberation and upon the establishment of what the parties term a military government, in Ilocos Sur, Abaya was appointed by the military governor as justice of the peace of the municipalities of Cervantes and Angaki, Ilocos Sur. Then, on August 1, 1945, Mauro Versoza, acting as delegate of the Department of the Interior, designated the petitioner temporary justice of the peace of Cervantes and Angaki, the appointment to "terminate as soon as your successor is appointed by the central office." Upon the restoration of peace and order and upon normal functioning of the Commonwealth government, petitioner was, on Februray 8, 1946, given an *ad interim* appointment by President Sergio Osmeña to the post of justice of the peace for the towns of Cervantes and Angaki. However, when this appointment was submitted to the Commission on Appointments, it was turned down. Abaya was given another appointment as justice of the peace by

President Manuel Roxas for the same municipalities of Cervantes and Angaki on December 5, 1946 but said appointment was left without being acted upon by the Commission on Appointments.

On June 13, 1947 and presumably because of the failure of the Commission on Appointments to approve the appointment of the petitioner, President Manuel Roxas extended an *ad interim* appointment to the post of justice of the peace of Cervantes and Angaki in favor of the respondent Alejandrino A. Alvear who accepted said appointment and assumed office on July 5, 1947. Alvear's appointment was later confirmed by the Commission on Appointments. In respondent's answer he claims that when he assumed office the petitioner was nowhere to be found because he had gone to the town of Candon, Ilocos Sur to reside. He also states that the petitioner has already asked the Secretary of Justice to have his application for retirement approved.

The petitioner claims that shortly after the respondent had assumed office as justice of the peace of Cervantes and Angaki, he, the petitioner wrote a letter to His Excellency, the President of the Philippines protesting against his being deprived of his old post, although, no copy of said letter could be found in the office of the Assistant Executive Secretary of Malacañan. The petitioner further claims that when he failed to receive any answer to his letter to the President, he conferred with Honorable Elpidio Quirino, then Vice-President of the Philippines and Senator Prospero Sanidad regarding his being restored to the position for justice of the peace of Cervantes and Angaki. Failing to receive immediate relief, he commenced these *quo warranto* proceedings in this Court for the purpose of having him declared the legal and lawful justice of the peace for the towns already referred to and have the respondent ousted therefrom. His complaint was received by this Court on November 14, 1947.

The theory of respondent is that petitioner had lost his right, title or valid claim to the position of justice of the peace of Cervantes and Angaki by reason of abandonment, consisting in his acceptance of the position of justice of the peace of Cervantes only, during the Japanese occupation, said position being different and distinct from the circuit of Cervantes and Angaki held by him before the war; his acceptance of the position of temporary justice of the peace of Cervantes and Angaki under an appointment extended by a Special Delegate of the Department of the Interior; his departure from his circuit of Cervantes and Angaki, and his residence in Candon, Ilocos Sur; lastly, his insistence on the approval of his retirement and, his inaction for several months from June 30, 1947 to November 30, 1947, evidencing his intention to abandon his office.

This Court has recently decided a case whose facts are very similar to the present case. We refer to the case of *Teves vs. Sindiong* (G. R. No. L-2050), promulgated on October 21, 1948. In said case the facts are related in the statement which we quote:

"On December 19, 1914, Pablo Teves was appointed justice of the peace of Luzurriaga, Negros Oriental. He qualified for and assumed said office on January 14, 1915, and had since discharged the duties of said office up to the outbreak of the Pacific war in December, 1941. Negros Oriental, or part thereof, was subsequently occupied by the Japanese army. The plaintiff followed and stayed with the guerrillas in the free area and continued to discharge his duties as justice of the peace of that part of Luzurriaga not occupied by the invaders. However, sometime in October 1943, the plaintiff was arrested by a Japanese patrol and was later taken down to Dumanegue, capital of Negros Oriental, and there kept a virtual prisoner. Because of plaintiff's absence from the free area of Luzurriaga where a free government had been organized and maintained by the guerrilla forces, the Deputy Governor of said government appointed Atty. Mauro Edrial as justice of the peace of said municipality of Luzurriaga. Edrial qualified for the position and performed the duties thereof from July 8, 1944 to January 4, 1945. In October, 1944, Pablo Teves managed to escape from his confinement in Dumanegue, went to the free area of Luzurriaga, and asked the Deputy Governor under the guerrilla Government to restore to him his post of justice of the peace of Luzurriaga. He was advised that before he could be reinstated he should secure a clearance certificate from the guerrilla military authorities to prove his loyalty to the Filipino cause. Plaintiff secured the necessary clearance, and, on January 4, 1945, he was appointed justice of the peace of the municipalities of Luzurriaga and Bacong, 6th Administrative District, by Deputy Governor Margarito Teves, which appointment was approved by Alfredo Montelibano, Governor of the Islands of Negros and Siquijor. Plaintiff Teves resumed, or rather qualified for said office and discharged the duties thereof.

"On May 1, 1945, Teves was again appointed *acting* justice of the peace of Luzurriaga, Bacong and Dauin, by special agent Jose M. Aldeguer of the Department of the Interior, by virtue of the authority vested in that Department by the President of the Commonwealth of the Philippines, said appointment bearing the approval of the Commanding Officer of PCAU 24. On the same day, the plaintiff qualified for and assumed said office. Then, on December 26, 1945, Teves was again appointed by President of the Philippines Sergio Osmeña, as *ad interim* justice of the peace of Luzurriaga, Negros Oriental. Teves again qualified for and assumed said office. However, when his appointment was submitted to the Commission on Appointments, it was not confirmed. Despite this non-confirmation, plaintiff Teves continued in office.

"In the meantime, and presumably because of his non-confirmation of Teves' appointment, the President of the Philippines nominated the defendant Perpetuo A. Sindiong justice of the peace of Luzurriaga and said nomination was confirmed by the Commission on Appointments on September 3, 1946. Sindiong took the corresponding oath on September 14, 1946, and then advised the plaintiff of his appointment and demanded of him the surrender of the office. Plaintiff refused to comply with this demand, insisting that he was the legitimate justice of the peace of Luzurriaga. On being apprised of the situation, the Judge of the Court of First Instance of Negros Oriental issued a summary order dated September 23, 1946, directing plaintiff Pablo Teves to make delivery within ten days of the office

of justice of the peace of Luzurriaga, together with the documents and records pertaining thereto to the defendant Perpetuo A. Sindiong, under penalty of contempt. To avoid unpleasant consequences, Teves surrendered the office and its records to Sindiong on October 7, 1946, and a week later, or on October 14, he commenced the present action in the Court below."

In that case we held that because of the abnormal conditions obtaining in Negros Oriental by reason of the war the formation of new judicial circuits including Luzurriaga—first, the grouping of Luzurriaga and Bacong, and later the merger of the three towns of Luzurriaga, Bacong and Dauin, into a circuit,—was a makeshift arrangement, a mere temporary expedient, far from being permanent in nature, but merely designed to meet and solve the exigencies of the administration of justice in those areas in the best manner possible under said abnormal conditions; that the law and doctrines governing abandonment of an office may not and should not be strictly applied to cases occurring during the war, specially in those areas occupied partly or entirely by the enemy; and that considering the surrounding circumstances, we ruled that in accepting the post of justice of the peace of Luzurriaga and Bacong and later of the office of justice of the peace of Luzurriaga, Bacong and Dauin, Teves did not abandon his post of justice of the peace of Luzurriaga. We also held in said case that the acceptance by Teves of the *ad interim* appointment in December, 1945, of his old post of justice of the peace of Luzurriaga was not a waiver of his right and title to the old post; that he had the right to hold the same, not under the new *ad interim* appointment in December, 1945, but by virtue of his original appointment in 1914, for the reason that one cannot be properly appointed to the same post that he is already holding under a valid appointment. In addition, we observed in that case that a subsequent appointment to the post of justice of the Peace extended to one who already had a right to it because of a previous pre-war appointment under which he had qualified and discharged his duties, may be regarded as a mere restitution or restoration of the position which belonged to him; and that the new appointment can add nothing to or diminish his right to the office conferred by his original appointment.

Applying the doctrine laid down in that case of *Teves vs. Sindiong*, including the observations made therein, we find and so hold that because of the abnormal conditions obtaining in Ilocos Sur, particularly the towns of Cervantes and Angaki during the war, there is reason to believe that the changing of the original circuit occupied by petitioner Abaya by eliminating therefrom the town of Angaki, was a mere temporary expedient to meet the exigencies of the administration of justice in that area, under abnormal conditions, and that his acceptance of the new post did not

involve or entail abandonment of his old position. In proof of the temporary nature of the change in the circuit is the fact that when conditions returned to normal, the old circuit comprising the towns of Cervantes and Angaki was restored. And it is significant to note that when said old circuit was restored, the petitioner was likewise restored to his old post by appointments extended by two administrations, that of President Osmeña and the administration of President Roxas.

We may add, as we have stated in the case of *Teves vs. Sindiong* that in those days Abaya could not very well dictate his terms of acceptance of the positions extended to him. He had to take them as they came, accepting the position of justice of the peace of Cervantes alone during the occupation and accepting a new appointment to his old circuit during the days following the liberation. He had no freedom of choice. The important thing is that he never intended to abandon his old post and all along during the Japanese occupation and even after liberation he continued in the judicial service and exercised and discharged the functions of the office of justice of the peace in the same place and area which he did before the war. And, we may also say that his appointment by President Osmeña and later by President Roxas, to his old post of justice of the peace of Cervantes and Angaki though not confirmed by the Commission on Appointments, was unnecessary; that it did not and could not add anything to or diminish his right to the office conferred by his original appointment, but that said appointments may be regarded as a mere restitution of the office which belonged to him but which he failed to hold because of, and during the war.

We find no merit in the other grounds advanced by the respondent. When the respondent assumed the office of justice of the peace of Cervantes and Angaki, there was no reason nor obligation on the part of the petitioner to continue residing in Cervantes. He was prompted to reside in Candon perhaps because it was his native town. Furthermore, his asking the government to act upon his application for retirement may not be regarded as evidence of intent to abandon his office. We understand that such applications for retirement had, years ago, been filed by many government officials in order to secure the benefits of the retirement law. And his urging the government to act upon such application was perhaps a mere precaution for purposes of security in case that he lost his office against his will. His very letter to the Secretary of Justice in this regard (Exhibit 7) states that his successor to the post of justice of the peace of Cervantes and Angaki was appointed without his knowledge. And to further demonstrate that he did not intend to lose said office without effort or fight, he filed these proceedings not long after he was deprived thereof.

In view of the foregoing, we hold and decide that the petitioner Jose Abaya never abandoned his office of justice of the peace of Cervantes and Angaki, Province of Ilocos Sur, and that he is entitled to the same by virtue of his pre-war appointment; and respondent Alejandrino A. Alvear is hereby ordered to deliver said office and all the records appertaining thereto to said petitioner. No pronouncement as to costs. So ordered.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

Petition granted.

[November 10, 1948]

RE-CASES APPEALED FROM THE PEOPLE'S COURT

1. COURTS; JURISDICTION OF THE PEOPLE'S COURT.—Under Commonwealth Act No. 682, the People's Court had jurisdiction not only to try and decide all cases of crimes against national security but to convict and sentence the accused for any crime included in the acts alleged in the information and established by the evidence, and decisions and final orders of said court were subject to review by the Supreme Court.
2. APPEALS; DECISIONS OF THE PEOPLE'S COURT WHY MADE APPEALABLE TO SUPREME COURT.—When Commonwealth Act No. 682 was enacted on September 25, 1945, there was no Court of Appeals, this court having been abolished by Executive Order No. 37 dated March 10, 1945; and this is evidently the only reason why the decisions of the People's Court were appealable to the Supreme Court irrespective of the penalty imposed.
3. ID.; APPELLATE JURISDICTION OF COURT OF APPEALS AFTER ITS RE-ESTABLISHMENT.—By the enactment of Republic Act No. 52, the Court of Appeals has resumed its exclusive appellate jurisdiction as therefore provided for by law, of all cases, actions and proceedings not falling within the exclusive appellate jurisdiction of the Supreme Court.
4. ID.; JUDICIARY ACT OF 1948; APPELLATE JURISDICTION OF SUPREME COURT AND COURT OF APPEALS PRESERVED.—The Judiciary Act of 1948 has preserved the exclusive appellate jurisdiction of the Supreme Court as well as the Court of Appeals as theretofore provided for by law. Moreover, the said Judiciary Act has repealed all laws and rules inconsistent therewith.
5. ID.; COURT OF APPEALS; RESTORATION OF ITS EXCLUSIVE APPELLATE JURISDICTION.—With the complete restoration of the exclusive appellate jurisdiction of the Court of Appeals and the repeal of all laws and rules inconsistent with the Judiciary Act of 1948, *Held*: That the treason cases which do not belong to criminal cases specified in section 17 of said Act, fall under the exclusive appellate jurisdiction of the Court of Appeals.
6. ID.; JUDICIARY ACT OF 1948; SECTION 29 THEREOF INTERPRETED.—It is true that section 29 of the Judiciary Act in referring to the exclusive appellate jurisdiction of the Court of Appeals, speaks of "all cases, actions, and proceedings not enumerated in section seventeen of this Act, *properly brought to it from Court of First Instance*." But, in our opinion, *Held*: That the specific mention of "Courts of First Instance" cannot alter or qualify the limits of the exclusive jurisdiction of the Supreme Court as expressly fixed by section 17 of the Judiciary Act and determined, as regards criminal cases, by the penalty im-

posed (death or life imprisonment), and as a corollary the exclusive appellate jurisdiction of the Court of Appeals over criminal cases in which the penalty imposed is less than death or life imprisonment.

7. COURTS; JUDICIARY ACT OF 1948; PEOPLE'S COURT AS HAVING THE CATEGORY OF A COURT OF FIRST INSTANCE.—The People's Court should be considered as having at most the category of a court of first instance in the sense contemplated in section 29 of the Judiciary Act. Whereas the People's Court had special and limited jurisdiction, the Court of First Instance has general jurisdiction, so that, if one is higher than the other, it must be the Court of First Instance. Our classification finds official support in Republic Act No. 311 which has transferred all cases pending in the People's Court upon the latter's abolition to the respective Courts of First Instance of the province or cities where the offenses are alleged to have been committed, and which makes the decisions of the Courts of First Instance in such cases appealable to the Court of Appeals or to the Supreme Court as the case may be, in accordance with the provisions of the existing laws and rules.

RESOLUTION

PARÁS, J.:

There are about forty treason cases appealed to this Court before the re-creation of the Court of Appeals wherein the penalty imposed is less than *reclusión perpetua* or death. After the re-creation of the Court of Appeals, these cases were certified to it. The question that arises is whether they should be left with that court or whether they correspond and should be returned to this Court.

Under Commonwealth Act No. 682, the People's Court had jurisdiction not only to try and decide all cases of crimes against national security but to convict and sentence the accused for any crime included in the acts alleged in the information and established by the evidence, and decisions and final orders of said court were subject to review by the Supreme Court.

When Commonwealth Act No. 682 was enacted on September 25, 1945, there was no Court of Appeals, this court having been abolished by Executive Order No. 37 dated March 10, 1945; and this is evidently the only reason why the decisions of the People's Court were appealable to the Supreme Court irrespective of the penalty imposed.

The Court of Appeals was re-created by Republic Act No. 52, approved on October 4, 1946, with the result, needless to say, that it has thereafter resumed its exclusive appellate jurisdiction of all cases, actions and proceedings not falling within the exclusive appellate jurisdiction of the Supreme Court. Act No. 52, section 3, further provides that "all cases which properly correspond to the Court of Appeals by virtue of the provisions of Commonwealth Act Numbered Three, as revived and amended, which may be pending in the Supreme Court and which have not yet been heard on argument and submitted for decision by this Court, shall be certified by the Clerk of

the Supreme Court to the Clerk of the Court of Appeals, to be heard and decided by the latter in conformity with the provisions of this Act."

The Judiciary Act of 1918 (No. 296), passed on June 17, 1948, has preserved the exclusive appellate jurisdiction of the Supreme Court over "all criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately" (Section 17, par. [4], as well as the exclusive appellate jurisdiction of the Court of Appeals over "all cases, actions, and proceedings not enumerated in section seventeen of this Act (Section 29). Moreover, the said Judiciary Act has repealed all laws and rules inconsistent therewith (Section 99).

With the complete restoration of the exclusive appellate jurisdiction of the Court of Appeals and the repeal of all laws and rules inconsistent with the Judiciary Act of 1948, it must logically follow that the treason cases hereinabove mentioned fall under the exclusive appellate jurisdiction of the Court of Appeals, because they do not belong to criminal cases specified in section 17 of said Act. It is not even necessary to invoke, in support of the propriety of the certification by this Court those cases to the Court of Appeals, section 3 of Act No. 52, because, in view of the repealing clause of the Judiciary Act of 1948, all cases falling under the exclusive appellate jurisdiction of the Court of Appeals, whether or not heard on argument and submitted for decision by the Supreme Court, have to be certified to the Court of Appeals. This step is expressly authorized by section 31 of the Judiciary Act (formerly section 145-H of the Revised Administrative Code, as revived by Republic Act No. 52) which provides that "all cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it had originally been brought before it." This provision is comprehensive enough to include cases "erroneously brought" not only after but also before the approval of the Judiciary Act.

It is true that section 29 of the Judiciary Act, in referring to the exclusive appellate jurisdiction of the Court of Appeals, speaks of "all cases, actions, and proceedings not enumerated in section seventeen of this Act, *properly brought to it from Court of First Instance.*" But, in our opinion, the specific mention of "Courts of First Instance" cannot alter or qualify the limits of the exclusive appellate

jurisdiction of the Supreme Court as expressly fixed by section 17 of the Judiciary Act and determined, as regards criminal cases, by the penalty imposed (death or life imprisonment), and as a corollary the exclusive appellate jurisdiction of the Court of Appeals over criminal cases in which the penalty imposed is less than death or life imprisonment.

Moreover, the People's Court should be considered as having at most the category of a Court of First Instance in the sense contemplated in section 29 of the Judiciary Act. Whereas the People's Court had special and limited jurisdiction, the Court of First Instance has general jurisdiction, so that, if one is higher than the other, it must be the Court of First Instance. Our classification finds official support in Republic Act No. 311 which has transferred all cases pending in the People's Court upon the latter's abolition to the respective Courts of First Instance of the province or cities where the offenses are alleged to have been committed, and which makes the decisions of the courts of first instance in such cases appealable to the Court of Appeals or to the Supreme Court as the case may be, in accordance with the provisions of the existing laws and rules. Even the People's Court Act (No. 682) considered that court as having merely the category of a Court of First Instance when, in section 2, it provided that treason cases not instituted within the period therein fixed "shall be filed with, tried and determined by the proper Court of First Instance."

If the treason cases in question should be returned to and decided by this Court, we shall furthermore have the anomaly that similar cases decided by the Courts of First Instance after the abolition of the People's Court will be appealable to and disposed of by the Court of Appeals in virtue of Republic Act No. 311. The decision by the Supreme Court of some such cases was warranted before the revival of the Court of Appeals, but for the Supreme Court to take cognizance of said treason cases now, when the Court of Appeals is functioning, would amount to a discrimination.

We therefore hold that the treason cases hereinabove referred to were properly certified to, and should be duly disposed of, by the Court of Appeals.

Ozaeta, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

PERFECTO, J., concurring:

When the treason cases mentioned in the resolution were, many months ago, certified to the Court of Appeals, we made of record our objection. We did not see then, and we do not see now, any valid legal reason why the Supreme Court should not continue taking cognizance of said cases

and proceed to their final determination. We felt that by transferring the cases to the Court of Appeals, we were shirking our responsibility.

Now the question is raised as to the return or retransfer of the cases from the Court of Appeals to the Supreme Court. There are no sufficient reasons why the retransfer should be effected. Public interest demands that no retransfer be effected. It will only hamper the speedy administration of justice. On more than one occasion, we have frowned on judicial football. In the same way that the members of this Court have already considered and studied several of the cases in question before their transfer to the Court of Appeals, it is not improbable that after so many months, the members of the Court of Appeals must also have already devoted much precious time to several or many of said cases. The waste of the time and energy of the members of the Supreme Court should not be aggravated by another waste of time and energy of the members of the Court of Appeals.

FERIA, J., dissenting:

I dissent.

The Courts of First Instance existed and were known as such before the creation of the People's Court. When the People's Court was created by Commonwealth Act No. 682 to try treason cases, the jurisdiction to try and decide these cases was transferred to the People's Court. The two courts were distinct and different. The Courts of First Instance were unipersonal and of general jurisdiction over cases arising within their respective territory or territorial jurisdiction, while the People's Court was a collective court, that is, composed of three or more judges acting as a body, and of special jurisdiction over all treason cases committed within the Philippines, and such other crimes which are included in the charge of treason which might be alleged and proven if the latter was not established.

The sentences rendered by the Courts of First Instance were and are appealable to the Court of Appeals or to the Supreme Court, depending upon the penalty imposed or the question raised on appeal; while all sentences rendered by the People's Court, irrespective of the penalty actually imposed, were appealable only to the Supreme Court. The reason why they were not made appealable to the Court of Appeals even if the penalty imposed were not life imprisonment or death, was not precisely because at the time the People's Court was created, the Court of Appeals had been previously abolished, for otherwise at the recreation of the Court of Appeals by Republic Act No. 52, on October 2, 1946, it would have been provided therein that appeal should be taken to the Court of Appeals or to the Supreme Court as the case may be; but because there was no justifiable reason for appealing from a sentence rendered by

the People's Court composed of three judges to another Court or Court of Appeals which acts in division composed of three judges also, except where the division fails to reach a decision in a case submitted to it, or whenever such decision shall so order, or whenever the Presiding Judge in the exercise of his sound discretion shall so order, in which case the action shall be heard and decided by the Court *in banc* (section 145 k, as amended by Commonwealth Act No. 52); besides, because it was the apparent intention of Congress to have all treason cases tried originally and on appeal by Judges and Justices who had not served in the Government during the Japanese occupation. The members of the Court of Appeals are appointed without taking into consideration whether or not the person so appointed had so served, and the fact that they had served in the Government during the Japanese occupation did not disqualify them to act in a case appealed to that Court; while members of the Supreme Court who had served as officer or employee in the puppet Republic of the Philippines were disqualified to act in a treason case appealed from the People's Court, though the provisions of the People's Court Act referring to such disqualification were declared by the majority of this Court unconstitutional.

The appellate jurisdiction of the Court of Appeals is purely statutory or conferred by the statute, and therefore, it has jurisdiction only over cases expressly provided by law. Before the creation of the People's Court the Court of Appeals had appellate jurisdiction only over cases properly brought to it from the Courts of First Instance not falling within the appellate jurisdiction of the Supreme Court. When the Court of Appeals was recreated after the People's Court had been established, it preserved its appellate jurisdiction over cases properly brought to it *from the Courts of First Instance*, and that was the reason why after a thorough deliberation on the matter of whether or not to transfer treason cases appealed from the People's Court, in which the penalty imposed was less than life imprisonment, we arrived at the conclusion that we could not transfer such cases appealed from the People's Court to the newly recreated Court of Appeals. The new Judiciary Act of June 17, 1948, did not enlarge the appellate jurisdiction of the Court of Appeals, for section 29 thereof which refers to the appellate jurisdiction of the said Court is a literal reproduction of section 145F of the Administrative Code as amended by Commonwealth Act No. 3, as revised by Republic Act No. 52, and provides that "the Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions, and proceedings not enumerated in section seventeen of this Act (which speaks of cases falling within the exclusive appellate jurisdiction of the Supreme Court) properly brought to it *from the Courts of First Instance*. It did not and does not have

appellate jurisdiction over cases tried and decided by the People's Court because there is no law conferring upon it such jurisdiction.

The exclusive appellate jurisdiction of the Supreme Court over cases appealed from the People's Court in which the penalty is less than life imprisonment is also statutory or conferred by section 13 of Act No. 682 which created the People's Court. Under the Constitution as well as under the other laws or statutory in force, the Supreme Court has no such jurisdiction. And when Act No. 311 was promulgated it abolished only the People's Court and provided in its section 29, that "all cases pending before said Court and not embraced by Amnesty Proclamation shall be transferred to and tried by the respective Courts of First Instance of the province or city where the offenses are alleged to have been committed," and that "the decision of the Courts of First Instance in such case shall be appealed to the Court of Appeals or the Supreme Court as the case may be, in accordance with the provisions of the existing laws and rules, and shall be disposed of by the appellate Court in the same manner as other criminal cases."

From the provisions of section 29 of Republic Act No. 311, it clearly appears that it was the intention of Congress to have the treason cases not pending before, but already decided by the People's Court at the time said Act became effective, appealed to the Supreme Court as theretofore in accordance with the provisions of section 13 of Commonwealth Act No. 682, because said section has not been repealed by said Act No. 311, and is still in force as to such cases, for this Act has only abolished the People's Court. Had the intention of Congress been otherwise, that is, that all cases pending as those decided already by the People's Court at the time Republic Act No. 311 was promulgated, should be appealed to the Court of Appeals or to the Supreme Court, as the case may be, it should have so expressly stated therein, impliedly repealing thereby the provisions of section 13 of Commonwealth Act No. 682. Congress, by referring only in said section 2 of Republic Act No. 311 to appeals from decisions of the Courts of First Instance over cases then pending in the People's Court and transferred to said Courts, it excluded therefrom cases already decided by the People's Court and appealed or to be appealed to the Supreme Court according to section 13 of said Act No. 682, in accordance with the legal maxim *inclusio unios est exclusio alterius*. This is further confirmed by the legislative history of Act No. 311, which originally was Bill No. 1621, and provided in its section 6 that "Commonwealth Act No. 682 is hereby repealed * * *," but said section 6 was eliminated by the Senate, which clearly shows that it was not the intention of Congress to repeal Act No. 682, but only to abolish

the People's Court, thus leaving the provisions of section 6 of Act No. 682 not inconsistent with Act No. 311, regarding appeal from the decisions the People's Court already rendered at the time the Republic Act No. 311 became effective, in full force and effect.

This conclusion is in conformity with the well known rule laid down by the courts of last resort in the States of the Union, from which our laws on appeal were taken, which ruling, if not mandatory at least of persuasive authority, and which reads that "while the abolition of an inferior court may abridge the appellate jurisdiction theretofore possessed by another court over its judgment, it does not have such effect as to cases pending on appeal at the time of abolition. Where a new appellate district is created, or where there has been a redistricting of existing appellate districts, pending appeals will be transferred to the appellate court having jurisdiction thereof when a statute or valid order of the supreme court so provides; but in the absence of such a statute or order, appeals which have been perfected prior to the effective date of the statute will not be transferred to the court having jurisdiction under the new statute." (Fla.—Ferlita *vs.* Figarrota, 145 So., 605; 106 Fla., 578; Fla.—Ferlita *vs.* Figarrota, *supra*—Whitlock *vs.* American Central Ins. Co. of St. Louis, 144 So., 412; 107 Fla., 13; Tex.—Keator *vs.* Whittaker, 143 S. W., 607; 104 Tex., 628; Tex.—Kennedy *vs.* Wheeler, Civ. App., 256 S. W., 315; Tex.—Pry *vs.* Barron, 299 S. W., 230; 117 Tex. 170. (21 C. J. S., p. 206.)

MORAN, *C. J.*, dissenting:

I concur substantially in this dissent of Mr. Justice Feria. I believe that section 13 of Commonwealth Act No. 682 still governs appeal in treason cases.

PABLO, *M.:*

Concurro con estas disidencias.

[No. L-1654. Noviembre 20, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* BARTOLOMÉ AGUILAR, acusado y apelante

1. DERECHO PENAL; TRAICIÓN; TESTIGO; CONTRADICCIONES DE LOS TESTIGOS; PREGUNTAS SUGESTIVAS.—La mente en este caso incapaz de raciocinar, no hace más que reflejar, a modo de eco, la idea sugerida. En la prestación del testimonio la sugerición desempeña un papel muy importante. El mero hecho de preguntar a un testigo, de urgirle a que conteste, aumentan enormemente los errores de su testimonio. La forma de la pregunta también influye en el valor de la contestación que se da a ella.
2. Id.; Id.; Id.; Id.;—Una pregunta sugestiva puesta a un testigo y que crea una inferencia en su mente, puede influir para que declare de acuerdo con la sugerición transmitida por la pregunta; su contestación puede ser un eco de la pregunta más bien que un verdadero recuerdo de los acontecimientos.

3. ID.; ID.; ID.; CREDIBILIDAD DE LA DECLARACIÓN.—No todas las personas obran de una mismo manera, bajo el impulso de un soló móvil: algunas obran por simpatía, otras por miedo, otras por curiosidad o por algún otro motivo.

APELACIÓN contra una sentencia del Tribunal del Pueblo.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Felipe Fernandez en representación del apelante.

El Procurador General Auxiliar Sr. Guillermo E. Torres y el Procurador Sr. Martiniano P. Vivo en representación del Gobierno.

PABLO, M.:

Bartolomé Aguilar fué condenado por el dilito de traición a reclusión perpetua con las accesorias prescritas por la ley, pagar una multa de ₱10,000 y las costas.

En apelación, acude ante este Tribunal pidiendo su absolución. Alega que tres errores cometió el Tribunal del Pueblo: (a) al dar crédito al testimonio improbable y contradictorio de los dos testigos Severino Abais y Pascual Albarado; (b) al no tener en cuenta la regla de dos testigos; y (c) al condenar al acusado por el delito de traición.

Los testigos Severino Abais y Pascual Albarado declararon que el acusado había denunciado en 13 de Julio de 1943 a Severino Abais, Juanito Fernandez y un tal Telo de haberse apropiado de arroz, cigarillos, goma y medicina para dárselos a la guerrilla. El acusado, como capataz, y los denunciados, como obreros, estaban entonces prestando servicios en el *Komocho* o bodega en donde estaban depositados los efectos del ejército japonés en la Ciudad de Cebú. Por esta denuncia algunos soldados japoneses acompañados por el acusado y un intérprete japonés arrestaron a los tres denunciados, atándoles por las manos. Se les sometió a investigación, y como no contestaran a satisfacción de los investigadores, fueron maltratados. Después, los denunciados fueron amarrados a un tubo de hierro, como si fuesen unos animales de labor. Una y media hora más tarde fueron trasladados a un lugar donde estaba el centinela y allí otra vez fueron maltratados en presencia de muchos obreros que fueron llamados expresamente para presenciar el inhumano y bárbaro maltrato de que fueron objeto. Al siguiente día los denunciados fueron colgados de un arbol de acacia con las manos atadas sobre sus cabezas. Para aumentar la ignominia de su desgracia se les despojó de su pantalón, dejándoles solamente en camiseta. Mientras estaban suspendidos del arbol se les empujó para que, como péndulos, oscilasen de un lado a otro, y en este estado algunos soldados japoneses les maltrataron: un soldado les pegó con un *bat de baseball*, otro soldado aplicó en sus cuerpos el fuego de un cigarrillo y el acusado sacó su cinturon con

el cual pegó a Severino Abais en la cabeza y otras partes del cuerpo. No contento con esto, el acusado vació gasolina a los colgados, prendiendo fuego después con un pedazo de papel a las partes privadas de Juanito y de Severino. Al quemarse las cuerdas, los colgados se desplomaron al suelo inconscientes. Al siguiente día los tres maltratados fueron puestos en libertad; pero Juanito Fernandez no gozó de ella porque falleció algún rato después, habiéndose quedado su parte privada tan achicharrada que ya no podía echar agua. Por las quemaduras, Severino Abais fué llevado al hospital, y en la fecha de la vista de esta causa que tuvo lugar el 17 de enero de 1947, no podía aun levantar con su mano derecha cosas pesadas como podía hacerlo antes del maltrato. Como triste recuerdo de sus sufrimientos, Abais demostró en el día de la vista su mano derecha con una cicatriz de 7 pulgadas de longitud; otra en la pierna derecha de 4 pulgadas de diámetro; otras en la mano izquierda y otra en la cintura, todas de 3 pulgadas de diámetro.

Los obreros de la bodega fueron llamados para presenciar las torturas a que fueron sometidos Severino, Juanito y Telo con el fin de que aquellos se dieran perfecta cuenta del castigo que se impone a los que prestan ayuda a las guerrillas; para hacerles comprender que si no querían recibir igual tratamiento que no deberían tener relación con las mismas y que el que ayudaba al ejército japonés, como el acusado, tenía derecho a maltratar como un soldado conquistador. Aniquilar a las guerrillas— pensaban los soldados japoneses—es aniquilar la resistencia armada. Por eso ellos emprendieron la obra de eliminación persiguiendo despiadadamente a las guerrillas y sus simpatizadores o a los que tenían relaciones con ellas, exponiendo estas horrorosas torturas a la vista de todos para que el público huya de las guerrillas. Y el acusado ayudó a los soldados japoneses en esta obra de persecución y supresión de guerrillas, torturando a tres pobres obreros de la bodega y causando la muerte de uno de ellos para asegurar la hegemonía del ejército japonés en su país invadido.

En apoyo de su contención de que la declaración de Abais es increíble, la defensa pregunta: si solamente arrojó el acusado gasolina a la parte privada del testigo, prendiéndola fuego después, por qué había tenido quemaduras el testigo en el brazo derecho y en la pierna derecha sin quemarse otra parte del cuerpo? Las cicatrices en las manos izquierda y derecha, en la pierna derecha y en la cintura ya descritas más arriba son la mejor prueba de las quemaduras, y si el testigo no habló más que de la quemadura en la parte genital, que es la que más le impresionó, no por ello no ha de merecer crédito su testimonio. Esas cicatrices que han sido vistas por los tres jueces del Tribunal y otros empleados durante la vista son

más elocuentes que el testimonio del testigo. Su silencio sobre algunos detalles puede atribuirse a olvido o por omisión del fiscal. No se puede negar que el testigo sufrió quemaduras, aunque no las mencionó todas.

El testigo Abais—dice la defensa—quería hacer creer al Tribunal que el acusado Bartolomé Aguilar que no era más que un simple capataz, dió ordenes a los soldados japoneses para arrestarle; que “ejercía tremendo poder e influencia y que podía dar órdenes a los soldados japoneses.” Este argumento no tiene importancia si se tiene en cuenta que el testigo no ha dicho tal cosa en las preguntas directas sino cuando la defensa formuló la siguiente repregunta sugestiva. “Q. And you said that that arrest was upon orders of the accused given to the Japanese. Did I get you all right? A. Yes, sir.” Una contestación obtenida bajo tales circunstancias, no hace increíble el testimonio del testigo. La aparente contradicción de su declaración con la de Pascual Albarado obedeció a sorpresa e inadvertencia debido a preguntas sugestivas. “La mente en este caso,” dijo este Tribunal en *Pueblo contra Limbo y Limbo* (49 Jur. Fil., 99), “incapaz de raciocinar, no hace más que reflejar, a modo de eco, la idea sugerida. El Profesor Ed. Claparede, Director del Laboratorio Psicológico de la Universidad de Génova, en su obra ‘What is the Value of Evidence,’ dice: ‘En la prestación del testimonio la sugerición desempeña un papel muy importante. El mero hecho de preguntar a un testigo, de urgirle a que conteste, aumentan enormemente los errores de su testimonio. La forma de la pregunta también influye en el valor de la contestación que se da a ella. Supongamos que a cierta persona se le preguntase acerca del color de cierto perro. Las contestaciones serían más exactas si se le preguntase: ‘qué color tenía el perro?’, que si la pregunta sería completamente sugestiva si preguntásemos: ‘Era blanco el perro?’ * * *’ Una pregunta sugestiva puesta a un testigo y que crea una inferencia en su mente, puede influir para que declare de acuerdo con la sugerición transmitida por la pregunta; su contestación puede ser ‘un eco de la pregunta’ más bien que verdadero recuerdo de los acontecimientos, * * *’’ (2 Moore on Facts, 913.) Fuera de la contestación a la pregunta citada, la declaración del testigo Abais corrobora substancialmente la del otro testigo Albarado. Una contradicción obtenida por la defensa bajo tales circunstancias no desmerezce, ni afecta la credibilidad de los dos testigos.

La declaración de Pascual Albarado de que la cuerda se quemó y por eso cayó Severino Abais al suelo es—sostiene la defensa—improbable y fantástico; si solamente se arrojó gasolina sobre la parte privada de Severino Abais, “por qué se quemó hasta la cuerda?” pregunta la defensa. Juzgando por las varias cicatrices que se encontraron en

el cuerpo de Abais, es fuerza concluir que se habrá arrojado no pequeña cantidad de gasolina contra el acusado y por eso se mojaron varias partes de su cuerpo, inclusive el mecate que, como es poroso, habrá absorbido bastante cantidad, la cantidad suficiente para que el fuego lo quemase. No hay nada de fantástico ni improbable en la quemadura del mecate.

Si Albarado se había escapado como uno de los obreros de la bodega, por qué—pregunta la defensa—había de volver aun y situarse a unas 7 brazas de distancia del lugar en que estaban colgados sus compañeros? La defensa sostiene que es contraria al sentido común esta declaración. No todas las personas obran de una misma manera, bajo el impulso de un sólo móvil: algunas obran por simpatía, otras por miedo, otras por curiosidad o por algún otro motivo. Hay fotógrafos que ponen en peligro su vida sólo para obtener en una catástrofe una fotografía. Hay corresponsales de prensa que toman parte en las batallas solamente para poder dar información a sus lectores. Si el miedo se hubiera apoderado completamente del testigo, es indudable que no hubiera vuelto al lugar; pero si la curiosidad ejerció más influencia sobre su ánimo no es extraña su conducta: quería saber la suerte que les cupo a sus compañeros. No es nada extraño el que Albarado haya presenciado la tortura de sus compañeros, pues quería tener una idea cabal de lo que eran capaces los japones.

Lo que no merece crédito es el testimonio de Selencio Villano, testigo de la defensa, que declaró que Severino Abais pidió ayuda al acusado, y al no darle por el gusto le amenazó con estas palabras: "There will be a day when I will have my revenge." Si Abais había sido ya objeto de varios maltratos, cómo podía atreverse a amenazar al que le denunció, a su verdugo? Era hostilizarle innecesariamente.

En nuestra opinión, el Tribunal del Pueblo no incurrió en los errores apuntados por la defensa. Las pruebas demuestran de una manera acabada que el acusado, sabiendo que, como ciudadano filipino, debía lealtad a su gobierno, ayudó a los soldados japoneses en su campaña de supresión de las guerrillas al objeto de asegurar su triunfo definitivo, con infracción del artículo 114 del Código Penal Revisado.

Se confirma la sentencia con costas.

Parás, Feria, Perfecto, Bengzon, Briones, Tuason, y Montemayor, MM., están conformes.

MORAN, Pres., concurrente:

Concurro con el raciocinio de esta decisión, pero creo que el acusado y apelante merece la pena de muerte ante la ley.

Se confirma la sentencia.

[No. L-2215. November 22, 1948]

LUIS FLORESCA, petitioner, vs. AMPARO QUETULIO,
respondent

1. PUBLIC OFFICERS; ABANDONMENT OF OFFICE.—Petitioner's refusal to go back to his old post and his subsequent acceptance of other employments, without any pretense on his part that he simultaneously contained to perform the functions of justice of the peace, clearly show deliberate abandonment of the latter office.
2. ID.; PUBLIC INTEREST AS PARAMOUNT.—A government official is not allowed to subordinate public interest to personal comfort and convenience.

ORIGINAL ACTION in the Supreme Court. *Quo warranto.*

The facts are stated in the opinion of the court.

The petitioner in his own behalf.

M. B. Quetulio for respondent.

PARÁS, J.:

The petitioner, pre-war justice of the peace of Piddig, Carasi and Nagpapalcan, Ilocos Norte, prays for his reinstatement to said position. It is alleged that he was not reappointed either upon the restoration of the Commonwealth Government or upon the establishment of the Republic of the Philippines, in violation of his constitutional tenure. The respondent, whose ouster is sought by the petitioner, admits her appointment to and actual incumbency of the position held before the war by the petitioner, but asserts her right to stay in view of petitioner's abandonment of said office.

The respondent's contention is correct. It is undisputed that the petitioner, when required by the proper authorities to assume his pre-war post after the liberation, refused to do so and pointed out that the salary of the position could not then sustain his family; that in the meantime the petitioner accepted the position, first, of junior legal assistant and, secondly, of civilian investigator of the Provost Marshal Office in the Gabu U. S Army Air Base at Laoag, Ilocos Norte; that shortly after the inauguration of the Republic of the Philippines, or on July 27, 1946, the petitioner accepted the position of senior social worker, PRATRA, for Ilocos Norte. Petitioner's refusal to go back to his old post and his subsequent acceptance of other employments, without any pretense on his part that he simultaneously continued to perform the functions of justice of the peace, clearly show deliberate abandonment of the latter office, especially when attention is called to the fact, likewise undisputed, that in the year 1946, the petitioner, in his application submitted to the committee in charge of passing upon applications for government positions in Ilocos Norte, made it clear that he

wanted to be appointed to any position other than that of justice of the peace. To now reinstate the petitioner would be to allow a government official to subordinate public interest to personal comfort and convenience.

The petition is therefore denied, with costs against the petitioner. So ordered.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

PERFECTO, J., concurring:

Upon the facts in this case, the conclusion is inevitable that petitioner has renounced the position of justice of the peace he is claiming. The constitutional guarantee of judicial tenure of office, as provided for in section 9 of Article VIII of the Constitution, is not a *carte blanche* for a judicial officer to freely relinquish his court position and to claim it at any time at his pleasure. A judicial office is not a household furniture which can be relegated to a corner and retrieved at one's convenience. It is not a private property that the occupant, at his discretion, may lend to others and reoccupy again.

A judicial position may be lost by resignation, renunciation, or abandonment. The constitutional guarantee of judicial tenure is, in such cases, waived. Because of that waiver, petitioner has lost all title to occupy again the judgeship in controversy and, for such reason, his petition must be dismissed.

Petition denied.

[No. L-397. November 23, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. PILAR BARRERA DE REYES, defendant and appellant

CRIMINAL LAW; TREASON; EVIDENCE; PROSECUTION HAS THE "ONUS PROBANDI" TO OVERCOME ACCUSED'S PRESUMPTION OF INNOCENCE.—The prosecution has the *onus probandi* in showing the guilt of an accused. "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved." (Section 1 [17], Article III of the Constitution.) The evidence of the prosecution in this case does not show beyond all reasonable doubt that the accused has committed the overt act imputed to her. The presumption of innocence in favor of appellant has not been overthrown.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Enrique Ramirez for appellant.

First Assistant Solicitor General Roberto A. Gianzon
and *Solicitor Inocencio Rosal* for appellee.

PERFECTO, J.:

Pilar Barrera de Reyes appealed against the lower court's judgment finding her guilty of treason and sentencing her, in accordance with the provisions of article 114 of the Re-

vised Penal Code, to *reclusión perpetua*, with the accessories of the law and to pay a fine in the amount of ₱10,000 and the costs.

The prosecution accuses her of having caused, by pointing them to Japanese officers and soldiers, the arrest of three Filipino guerrilla suspects, Pelagio Cabutin, Ignacio Mejia and Alejandro Tan, who, after having been apprehended inside the air raid shelter where they were hiding inside the ruins of the Santa Rosa College, Intramuros, Manila, were tortured and then brought to Fort Santiago where they were killed, the treasonous denunciation having been committed on February 15, 1945.

Two witnesses, Modesta B. Son and her daughter Lourdes B. Son, testified for the prosecution to show appellant's responsibility for the arrest, torture and killing of the three victims of Japanese brutality. According to the two witnesses, on February 5, 1945, all the male residents in Intramuros, about 400 of them, were taken by the Japanese and herded in Fort Santiago, while all the females, about 300, and the children, were herded inside the ruins of Santa Rosa College. The three victims, members of a guerrilla outfit in Laguna, who went to Intramuros to visit their relative and observe the activities of the Japanese, were among the males who were rounded up, tied, tortured and brought to Fort Santiago on February 5, 1945. On February 9, 1945, they were able to secure permission from a Japanese lieutenant to go out for the purpose of visiting two girls, Rosing and Magdalena, Cabutin's nieces, who were among the women herded in the Santa Rosa College compound. (The statement in the government's brief that the three victims managed to escape is not based on any testimony on record.) Once inside the ruins, Cabutin and companions hid from the Japanese, dug an air raid shelter, covered it with wood and earth, and on top built a shack for Rosing and Magdalena to stay in. The accused, who was living in another shack with her child and a maid and wherein her husband, a Japanese officer, passed all night from 6 p. m. to 6 a. m., used to make rounds to spy on males hiding in the compound, pretending to barter foodstuffs. On the morning of February 15, 1945, she discovered the presence of the three victims and reported the fact to her husband who, in turn, called three Japanese soldiers and all of them, including the accused, went to the hiding place and the three Japanese soldiers apprehended the three victims and tortured them. The accused told the Japanese officer to take the three guerrillas and bring them to Fort Santiago. The arrest of the three guerrillas took place in the morning, and in the afternoon of the same day the accused told the witness that the three had already been killed. On the following day, February 16, at 11 o'clock, Arcadio Son, Modesta's husband, who was hiding in their shack since February 5, was also taken by

the Japanese soldiers, tortured and brought to Fort Santiago, because the accused happened to hear of his presence in the place on February 15, and denounced him then to her husband, the Japanese officer. Arcadio Son never returned since he was brought to Fort Santiago. From February 5 to 20, there were in Santa Rosa College compound many women married to Japanese, all of them spies who used to go around the shacks to look for men in hiding. These other women peeped into the shack of Arcadio Son three times looking for men.

There is no way of determining with absolute certainty whether Modesta and Lourdes B. Son testified to the truth or not. While the record offers no clue that mother and daughter's testimonies should be imputed to bastard motives, there are flaws in their declarations that preclude us from accepting them at their face value. We notice several contradictions that have not been explained. But even if they can be explained, there are improbabilities in the testimonies, from accepting which conscience recoils. That Cabutin, Mejia and Tan, after having been confined in Fort Santiago since February 5, were on February 9 given permission by a Japanese lieutenant to go out for the exclusive purpose of visiting Cabutin's nieces, Rosing and Magdalena, appears to be fantastic. That the three guerrillas were allowed to go out, that they went out without any Japanese guard or escort, and that, upon their failure to return, the Japanese did not right away comb all places including the Santa Rosa College for their arrest, are things incompatible with the ways of the Japanese. If the Japanese lieutenant could have believed that to visit his nieces was enough reason to allow Cabutin to go out from Fort Santiago, such reason could not be applied in favor of his two companions who had nothing to do with the girls. If the three guerrillas wanted to hide, they could not have been so dumb to go to and stay at the very spot where Rosing and Magdalena were staying, as it would be the logical spot, to anyone's mind, that the Japanese would have searched first, because the Japanese lieutenant must have known that to visit the two girls, they must have had to go to their place.

If it is true that the accused had been making daily rounds in order to detect males hiding in the Santa Rosa College compound, it is incomprehensible how it took her six days, from February 9 to February 15, to discover the presence of the guerrilla trio and to denounce them to the Japanese officer. According to Modesta and Lourdes, the air raid shelter dug by the trio was situated at a few meters distance from the shack of the accused. Before the three guerrillas had been able to dig the hole, all of them must have been exposed to the full view of the accused and they remained so while they were working in the excavation, to perform which it would have taken days or many

hours. The earth and stones taken from the hole must have been piled on the surface. When the three guerrillas undertook the work of placing wooden planks and earth on top of the shelter and then they built the shack for Rosing and Magdalena, they could have also been seen by the accused. There is no pretense that the accused suffered blindness during the hours and days needed the three guerrillas to complete the whole job.

Modesta's story of the Japanese officer who every night slept with the accused, is surprising. The conduct of the Japanese appears to be that of a civilian employee rather than that of a military officer or, at any rate, of a man enjoying the blessings of undisturbed peace. It is unbelievable that a Japanese officer should leave his garrison for whole nights, and much more at the time when the American army was already in Manila and was showering bombs and cannon shells in Intramuros.

Modesta would make us believe that the accused made denunciations to the Japanese officer in a way that she could hear them, that the accused was almost ordering the Japanese officer to bring the victims to Fort Santiago, and even bragged that they were already killed. A Filipina in her mind could not have done such things, considering the well-known fact of the overwhelming feeling in our population against the Japanese, and much more on February 15, 1945, when the victorious Americans had already surrounded Intramuros. It would have been suicidal for the accused to have done what Modesta attributes to her because it would have exposed her to reprisal or revenge.

Modesta would make us believe also that the presence of her husband, Arcadio Son, in the compound was discovered by the accused since February 15 and denounced on the same day to the Japanese officer, but the arrest took place only at 11 o'clock the next morning. No Japanese officer could have been so slow as that.

On the other hand, Modesta's assertion that she was outside of her shack when she witnessed the arrest of the guerrilla trio on February 15, is belied by Asuncion Dueñas, a witness for the prosecution, who said that when the three victims were caught by the Japanese, Modesta was during the whole time inside her shelter.

When after liberation, Modesta and her daughter denounced to the authorities the Japanese arrest in the Santa Rosa College ruins, both mentioned the apprehension of the guerrilla trio, but not the arrest of Arcadio Son. They failed to do so twice, first when they made the denunciation to Froilan Bungue, United States Army soldier, and the second time when they were investigated on March 15, at about 10 a.m., by the American CIC at General Solano Street. Modesta's explanation was that at that time her mind was perturbed, and that of Lourdes

was that she simply forgot about it. That a husband, a father, had in that way been forgotten by his wife and daughter who, nevertheless, were prompt in remembering the names of three acquaintances of friends, is a thing that cannot fail to cast doubt on the mother and daughter's credibility.

As regards Lourdes, there is her positive testimony that on November 16, 1945, she was beaten by her husband because she said on one occasion that the accused was not the same woman who pointed the three men caught by the Japanese at the Santa Rosa College and killed in Fort Santiago, that her husband told her to point the accused as the one, and that if she should tell again that it was not the accused, he would beat her again. This revelation cannot fail to affect her testimony against the accused.

The defense has shown that since February 11, 1945, the child of the accused had been ill and that she remained all the time attending to said child until it was killed by a sharpnel on February 18, and that it is not true that the accused had any Japanese sleeping with her or committed the acts attributed to her by the witness for the prosecution. A witness for the defense had shown that the witnesses for the prosecution could have confused the accused with other women, with similar features. When Modesta approached Froilan Bungue to denounce the arrests, the accused was not present, and among those arrested by Bungue as a result of the denunciation was one Asuncion Mendoza, while other witnesses testified that among the women spies were two, called by the name of Fely and Perla.

The prosecution has the *onus probandi* in showing the guilt of an accused. "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved." (Section 1 [17], Article III of the Constitution.) The evidence of the prosecution in this case does not show beyond all reasonable doubt that the accused has committed the overt act imputed to her. The presumption of innocence in favor of appellant has not been overthrown.

With the reversal of the appealed judgment, appellant Pilar Barrera de Reyes is acquitted and, upon promulgation of this decision she will be immediately released.

Moran, C. J., Pardás, Feria, Bengzon, and Briones, JJ., concur.

TUASON, J., dissenting:

Three eye-witnesses, not two, testified for the prosecution in this case.

Modesta B. Son testified that on February 5, 1945, the Japanese gathered all the menfolk in Intramuros, bound their hands, and took them to Fort Santiago. She saw about 200 men thus arrested. Pelagio Cabutin, Ignacio

Mejia and one Alejandro, whose surname she did not know, were among them. On February 9, they appeared at Sta. Rosa College; they said that they were able to get out because they talked to a Japanese lieutenant. From that time the three men stayed at Sta. Rosa College. They made a hole "deep enough," put planks of wood and galvanized iron sheets on top, and covered these with earth. On top of the covering they built a small shack for Rosing and Magdalena who were Pelagio Cabutin's nieces. The witness does not know whether Magdalena and Rosing were still alive because she had never seen them after liberation. On February 15, Cabutin, Mejia and Alejandro, by the indication of Pilar Barrera Reyes, were found and told to come out of the hole, and after they did, a Japanese officer and three Japanese soldiers slapped, kicked and bayoneted them, after which they were taken to Fort Santiago.

Before that date, the witness had known Pilar Barrera Reyes, when she was living at No. 73 Beaterio Street. Pilar used to call on witness' landlord. That began as early as February 15, 1944. Pilar Barrera Reyes was then living at No. 50 Legaspi Street. She lived with a Japanese officer who used to come to her house day and night. Witness supposed he was an officer because he carried a sword and a pistol.

At Sta. Rosa College, Pilar Barrera Reyes frequently went from shack to shack to barter food. But this was a mere pretext, her purpose being to find out if there were males in the shacks. When she pointed to the Japanese the hideout of Cabutin, Mejia and Alejandro she, the accused, was standing at the door of her shack. Then the Japanese officer fetched three Japanese soldiers. That was the time when the four Japanese arrested Cabutin, Mejia and Alejandro.

Modesta B. Son also testified that Pilar Barrera Reyes had witness' husband, Arcadio Son, arrested by the Japanese. That was on the 16th. Pilar informed the Japanese that Arcadio Son was inside the shack. Three Japanese soldiers came, pulled him out, tied and slapped him, and carried him away. This time Pilar Barrera Reyes was in front of the witness' shack when the arrest was made. Arcadio Son, when he was spied by the accused, was inside an air-raid shelter covered with pillows and mats and wearing a woman's dress. The accused happened to see Arcadio Son on February 16 when she was bartering foodstuffs and peered into the shack.

Lourdes B. Son, Modesta's daughter, 17 years old, testified substantially as follows: On February 5, 1945, the Japanese seized and arrested about 400 men in Intramuros, maltreated them and took them to Fort Santiago. All the women were sent to Sta. Rosa College which had already been destroyed by fire. Among the males taken

to Fort Santiago were Pelagio Cabutin, Ignacio Mejia and one Alejandro. About February 9, 1945, these three men appeared at Sta. Rosa. She asked them how they were able to get out and they answered they begged a Japanese officer to let them see and talk to their nieces Rosing and Magdalena. Then they hid themselves in an air-raid shelter. They dug a hole, put wood shafts inside and covered the top with galvanized iron sheets and earth. On top of these, they built a shack for Rosing and Magdalena. On February 15, Pilar Barrera Reyes was bartering rice at every shack. She heard voices in Rosing's shack and appeared surprised. She peeped in through a hole and saw the three men inside. After that she returned to her shack and one-half hour afterward her Japanese husband showed up. To the Japanese Pilar Barrera Reyes pointed the shack where she had heard men's voices. Thereupon the Japanese officer went out and brought back three soldiers. The Japanese removed the iron sheets from the shack and told Magdalena and Rosing to step out. Then they told the three men to come out. Once outside the hole, the three men were tied, slapped, beaten with the butts of guns and fists, stabbed with bayonets and, when they fell, were put back on their feet. While this punishment was being inflicted, Pilar Barrera Reyes was near the Japanese officer. The three men were taken to Fort Santiago and never heard from again.

On February 16, at 9 o'clock, the witness left her family's shack and when she returned she saw her father being tortured by three Japanese soldiers and the Japanese husband of Pilar Barrera Reyes. Her father was bleeding; at that time Pilar Barrera Reyes was beside the Japanese officer. Pilar Barrera Reyes was laughing and saying, "You are hiding yet, probably you are also a guerrilla." ("Nagtatago ka pa, marahil ay guerrilla ka rin.")

Asuncion Dueñas testified that on February 5, 1945, she was at the Cathedral with her husband, a cousin, and her three children. From the Cathedral, the women were sent to Sta. Rosa College while the males were taken to Fort Santiago by the Japanese. Among the women at Sta. Rosa College was Pilar Barrera Reyes whose shelter was about three brazas away from hers. In moving to Sta. Rosa College witness first took her three children and told her husband to wait at the Cathedral. Later she came back, put on him her own clothes, covered his head with a kerchief, and accompanied him to Sta. Rosa. On February 15, she saw Pilar Barrera Reyes talking with two Japanese officers who came to her shack. Pilar pointed her shelter to the Japanese and said that a man was hiding there. Then the Japanese officer led her husband out, stripped him of his woman's apparel and the towel with which his head was wrapped, after which they struck him with fists and bayoneted him on the left shoulder.

Witness heard Pilar say that it would be better to take him to Fort Santiago because he was hard-headed; he did not want to join the males. This happened about 3 o'clock in the afternoon.

At 11 o'clock a.m., of that day, she also saw Cabutin, Mejia and Alejandro being maltreated by three Japanese. They were tied, slapped, boxed and bayoneted. She heard Pilar tell the Japanese that they had better take the men to Fort Santiago.

Asuncion Dueñas also testified that once, on the 15th, Pilar Barrera Reyes saw her (witness') child crying; that when, in answer to the defendant's question why the baby was crying she said it was its habit to cry most of the time, Pilar remarked that witness should throw the child away. She also testified that on the 25th when they were liberated she and Pilar saw each other again at the San Lazaro Race Track. She said that she knew Modesta for the first time when they met at Sta. Rosa College.

The defense is a complete denial of any complicity, on the part of the accused, in the atrocities stated by government witnesses. Other women cohabiting with Japanese, it was alleged or insinuated, were the spies responsible for those atrocities.

The decision would tear down the testimony of the witnesses for the prosecution on assumed, not established or alleged, facts. On some points it theorizes from premises that are contrary to actual facts; on still others, the conjectures are not, in my judgment, sound even in the realms of speculation and psychology; for the rest, the discussion in the decision is immaterial in the light of defendant's defense or admission.

The Court disbelieves the evidence that Pelagio Cabutin, Ignacio Mejia and Alejandro came out of Fort Santiago with the permission of a Japanese officer. Truly, there is room for doubt as to the permission. We can not say for certain how these three men succeeded in getting out of that camp of horrors. If we indulge in speculation, the best guess is that they escaped. It is a matter of general knowledge that scores of prisoners were able to do that in those hectic days of Japanese sadism and brutality, perhaps due to the fact that there were too many prisoners there to attend to closely. There was more than a probability that when the men said they had obtained permission of a Japanese officer, they lied. Two of them were mere friends of the Sons, and one was the son of a distant cousin of Modesta. They were in an extremely perilous situation at the time when the carnage was at its worst. Lying even to immediate members of one's family was demanded by ordinary prudence. Their security from the nearest and almost certain death was undoubtedly enhanced by concealment of the truth that they had fled from Fort Santiago.

There is nothing queer in the testimony that the three men came to Sta. Rosa after escaping from Fort Santiago. That, on the contrary, seemed to be the natural thing for them to do. Where else could they go? When they were marched off to Fort Santiago from the Cathedral, the women including Rosing and Magdalena, their relatives and apparently housemates, were told to go to Sta. Rosa. They did not know, when they decided to come to the latter place, that Pilar Barrera de Reyes, the spy, was there nor that she and her Japanese paramour still sustained sexual relation in those critical days. Pilar Barrera Reyes, according to her testimony, moved to Sta. Rosa after February 5.

We do not share the doubt that Cabutin, Mejia and Alejandro made the hideout when they were caught. The way, as related by the witnesses, the three men dug a hole and concealed themselves in that hole sounds plausible. The whole affair, with materials at hand, could have been finished in a matter of hours; and if the men worked at night, as probably they did, that explains why they were not seen while working by Pilar Barrera Reyes or her Japanese friend. The decision assumed or presumed that Pilar and the Japanese officer were at Sta. Rosa all the time. The evidence shows that the Japanese officer was posted with his company or men at the Sto. Domingo church ruins where he stayed and had to stay most of the time, while it appears that the defendant at times went out of the Sta. Rosa premises. Moreover, the place was crowded with women and children.

From the tone and tenor of the Court's findings and of its ratiocination, it would appear that it brands the accusation as a fabrication out of whole cloth: that the alleged presence and arrest of Cabutin, Mejia and Alejandro at Sta. Rosa were a pure concoction. This supposition is more than the defense dared suggest, and I believe that it is far fetched. The time when the three witnesses implicated the defendant was early March, 1945. Still stunned by a holocaust; just widowed or orphaned under tragic circumstances; homeless and living on charity, their primary concern was where and how to find food and shelter. They were not in a mood and did not have the motive and the incentive to place upon themselves a new burden and worry by inventing a fantastic story against a woman who, according to that woman, had not done them any wrong. She even denied she knew the witnesses.

These witnesses did not have to use imaginary victims if they merely wanted to send the defendant to prison or to the gallows. It has been seen that Modesta B. Son and Asuncion Dueñas lost their own husbands under circumstances, they said, identical with the arrest, torture, and liquidation of Cabutin, Mejia and Alejandro. The

torture and arrest of those two men certainly furnished their folk the wherewithal to prosecute the defendant if the witnesses were just after defendant's scalp regardless of defendant's innocence of any connection with the discovery of their husbands' hiding. Yet Arcadio Son's arrest and torture were not made the subject of this information. This, we think, goes to refute the theory that the three women's statements to the authorities concerning the arrest of Cabutin, Mejia and Alejandro were a deliberate falsehood conceived in their imagination for no other reason than to send an innocent woman to her doom.

The truth of the matter is, as has been said, the accused herself has not advanced—at least not openly—the suggestion that the arrest of Cabutin, Mejia and Alejandro at Sta. Rosa College, was a fantasy. On the contrary, her evidence admits that these men were arrested in that college through the betrayal of a woman. Her line of defense is, not that the arrests and tortures were a fake, but that she was not the woman who revealed the three unfortunate men's hideout. It ought to be recorded that Lourdes Son was deceived into signing, or persuaded to sign, a statement prepared and put in evidence by defendant's counsel, in which she was made to say, or made her appear as saying, that she had been taken to the Correctional Institution for Women in Mandaluyong on the 16th of November, 1945, together with a sister of the accused, for the purpose of identifying the latter; that having seen the accused, she (Lourdes) realized that Pilar Barrera Reyes "was not the same woman whom she had seen in Intramuros pointing out to Japanese soldiers, *Pelagio Cabutin, Ignacio Mejia and Alejandro, who were taken by the Japanese officers to some place;*" that she (Lourdes) actually saw the woman who pointed the above-named Filipinos and heard her say that those three Filipinos are inside a certain air-raid shelter in Intramuros." To make that statement Lourdes was taken to Welfareville by one of the defendant's lawyers, her two sisters and a Corporal De Vera, husband of the defendant's elder sister Rosa.

And the accused and her witnesses, at the trial, amplified this thesis. The gist of their testimony is that at Sta. Rosa, two women (neither of them the accused) who cohabited with Japanese officers, disclosed the presence of the three men to the Japanese; that those two women accompanied Japanese officers in their search for men in the Sta. Rosa compound; that the said women resembled the accused, their names sounded like that of the accused, and they could easily be mistaken for the accused; that the accused bore the pet-name of Pil while one of the two women above mentioned was known by the name of Fely and the other's pet-name was Perla. That

is the simple issue. This is a simple case of mistaken identity! The government witnesses, according to the accused and her witnesses, got mixed up; Fely and/or Perla, not Pilar, were the traitors.

The question thus boils down to who cohabited with a Japanese officer, accompanied him in his rounds looking for males, and, discovering the hideout of Cabutin, Mejia and Alejandro, led her Japanese paramour to it.

Now, can we believe the yarn that the defendant was a mere victim of an unfortunate confusion?

The evidence that there were three women at Sta. Rosa College who resembled one another in names, in physiognomy and in general appearance, except the hair, which the defense stressed, has all the traces of a fiction. And granting the truth of such a rare coincidence, there was little or no possibility of the three witnesses for the prosecution committing the same mistake under conditions far from being conducive to errors of identity.

The incident occurred in broad daylight in the immediate presence of the witnesses. The arrest of the helpless men and the stabbing and other forms of torture perpetrated on them must have consumed no little time; and such atrocities were committed not once but three times. Only one women spy was an active participant in the atrocious acts. The witnesses had known the defendant by sight and by name for a long time before they took refuge at Sta. Rosa, and they were with her in that compound for two weeks after the arrest. Being the concubine of a Japanese officer and not by any means shy or of retiring disposition, as can be gathered from the record, she must have been conspicuous and the object of suspicion if not fear. At the Manila Jockey Club the three witnesses and the defendant were together again after liberation until the accused was arrested in connection with the present charge. In the light of these facts, illusions, associations, suggestions, judgment, trick of the memory could not have penetrated into and influence the witnesses' observations and caused them to mistake another woman for the defendant.

The record will have to be searched in vain for any ill will that could have induced the three women witnesses to trump up a charge for a capital offense against the defendant. At the most, they were moved by a righteous indignation aroused by the treachery of a Filipino who shamelessly aided and comforted with the enemy both in flesh and the wanton butchery of her people during that reign of terror and tribulations that tried men's souls. Asuncion Dueñas' statement that if the accused had not been arrested she herself might have killed her because of so many people she had betrayed, was a genuine and natural reaction of an aggrieved widow against one who

had brought her desolation, misery and suffering. Relating as it does to the very atrocities under investigation, her wrath gives vivid substance and reality to her testimony rather than weighs on her veracity.

The decision cites Exhibits 3—Lourdes Son's statement prepared by one of the defendant's attorneys and signed by Lourdes at the Correctional Institution for Women—to impeach Lourdes' testimony. I may mention that from a leading question asked Modesta Son by defense counsel it also seems that the defendant's attorneys were able to exact from her, in their office, a promise that she would stand by them. Needless to say, this procedure was highly reprehensible and unethical. In one aspect Exhibit 3 and Modesta's promise positively favor the prosecution. The defense's effort to win Modesta and Lourdes Son to its side after they had given evidence against the defendant is indication of its realization that there was truth and gravity in what they knew. And the ease with which the effort succeeded is evidence that the witnesses were not unfriendly, and gives the lie to the contention that they were bent on having the accused punished to the point of being capable of committing intentional injury against her.

Referring, on cross-examination, to Exhibit 3, Lourdes declared that she did not know what it said and insinuated that she was intimidated. While we may discount her testimony that she was threatened by Corporal Vera, we should not overlook the great probability that undue influence was brought to bear upon her and her mother to retract their statements made to the CIC and the prosecutors. They said that when they were summoned by De Vera and defendant's two sisters from their temporary quarters at the Gregorio del Pilar Elementary School to come to the lawyer's office, they thought the government lawyer's office was meant. De Vera's intervention could conceivably have disarmed them of any suspicion of anomaly. De Vera was one of the two non-commissioned officers who had questioned them at the Manila Jockey Club in March and who, it would seem, arrested the accused. They might not have known that this corporal had married the defendant's elder sister in June and had become defendant's protector. Modesta Son and Lourdes Son are unlettered.

On its intrinsic merit; Exhibit 3 is of little or no value. I have to admit that Modesta's and Lourdes's testimony is unsatisfactory on what the defendant's attorneys and De Vera told them and on other things that transpired between them. For reasons that can only be left to conjecture counsel did not press the point, which under normal circumstances would be an important bit of proof for the defense. But whatever the case may be, Exhibit 3 and Modesta's promise not to forsake the accused dis-

proves the insinuation of unreasoned hostility. In the face of the proven facts, they do not impair the witnesses' credibility on the main issue. Their statements to the military authorities in March were made spontaneously and, as has been heretofore said, the witnesses had received no inducement and had no reason to prevaricate. If they agreed with the defendant's lawyers to testify according to the tenor of Exhibit 3, their commitment could not be the truth, nor put in doubt the truth of their previous statements to the representatives of the prosecution.

The very character of the supposed mistake supposedly committed by the witness is, I think, its best refutation. As I trust I have shown, mistaken identity was highly remote. The implication of the accused by Modesta, Lourdes and Asuncion to the authorities was either an outright, deliberate falsehood or an absolute truth. There is no room for a middle ground. That it is the truth is inescapable. If Cabutin, Mejia and Alejandro were pointed out to the Japs by a woman, as the defense at least impliedly admits, and if, as the witnesses said the accused was that woman and so declared to the CIC, no amount of subsequent contrary statements can create any doubt as to the accuracy of their first information, unless it could be shown that they had any base motive to wish the defendant harm and to shield the real culprit. There is not the least indication or insinuation of either. To think that the witnesses left unmolested the real informer who was instrumental in the killing of members of their families and friends and trained their bitterness and resentment against a guiltless woman for no reason whatever is highly irrational.

Stripped of all cluttering details, the issue is reduced to the credibility of the opposing witnesses. There are no sufficient grounds for this Court to set aside the unanimous findings of fact of the three experienced judges who saw and heard the witnesses testify.

PABLO, M.:

Concurro con esta disidencia del Magistrado Tuason.

MONTEMAYOR, J.:

I concur in the foregoing opinion of Mr. Justice Tuason.

Judgment reversed; appellant acquitted.

[No. L-1992. November 23, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ROMEO APOSTOL, defendant and appellant

CRIMINAL LAW; TREASON; EVIDENCE FOR THE STATE AND FOR THE DEFENSE CONCLUSIVELY SHOW THE GUILT OF ACCUSED; CASE AT BAR.—The testimony of the accused and his affidavit Exhibit B have made more conclusive the facts proved by the witnesses for

the prosecution that the accused served as a Japanese spy at the time A. A. and C. C. were arrested and that their arrest was undertaken to give aid and comfort to the enemy.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Jose Ayala for appellant.

Assistant Solicitor General Inocencio Rosal and *Solicitor Antonio A. Torres* for appellee.

PERFECTO, J.:

The witnesses for the prosecution testified in substance as follows:

Maria A. Saquitang, 24, widow, 1158 Cazañas, Manila, testified that Antonio R. Azarraga, her brother, was seen by her last time on September 6, 1944, at 7 o'clock in the evening at the Central Hotel. The next day at 8 o'clock in the evening she went with her husband to the Central Hotel to give the money asked for her brother's release, and she saw him bleeding, with hands and feet tied together (2). Her brother was arrested at 7 o'clock in the evening of September 6, 1944, by three Filipinos, Japanese spies, two of whom, Pazing and Pedring, were known to her (3). The next day after the arrest, Jose Paza came to see the witness to tell her about the punishment of her brother, to inform her that the three who arrested him were Pedring, Pazing and Romy, and to ask ₱10,000 for the release of her brother. The witness said that she would give ₱8,000 and the rest later on. That same evening, the witness and her husband went to the hotel and met Jose Paza with the three Filipino spies. They were taken to the third floor where they handed the money over to Jose Paza. The witness was able to see her brother for two minutes. That was the last time she saw him. Jose Paza promised that her brother would be released at 8 o'clock that evening, but the promise was not fulfilled. (4). Three days after the money was given, on a Sunday, Jose Paza saw the witness and asked her to sign a receipt stating that the money was returned to her, threatening her that he would have her picked up if she did not sign the receipt. The witness signed it but the money was not returned. When the witness gave the money to Paza, the accused was present. Romy is the same accused. Her husband's name is Eduardo P. Saquitang. He was arrested on November 20, 1944, by the Japanese, and she did not see him again. The witness never saw again Pazing and Pedring (5). The witness saw the accused three times when he arrested her brother, at the Central Hotel, and at the hearing of the case. The witness was able to identify the accused by the mole and scar he has under his left eye (6).

Trinidad Azarraga, 30, widow, pharmacist, 1304 Dapitan, Manila testified that her husband, Antonio Azarraga, was picked up by three men on September 6, 1944 at their

home at 1304 Dapitan. The three men arrived at about 7 o'clock in the evening asking for Antonio Azarraga, who did not arrive yet. They waited for him. He arrived after two minutes and they placed him under arrest showing an identification card. The witness happened to know later that the three persons who arrested her husband were Pedring, Pazing and Romy. One of them is the accused. Her husband did not come back and maybe he is dead, otherwise he would have come home already. (9, 10). The witness recognized the accused because he has a mole and scar below the left eye. (11).

Cirilo Custodio, 31, married, electric contractor, 927 Rizal Avenue, Manila, testified that at 10 o'clock of October 6, 1944, while he was in his office at 927 Rizal Avenue, three persons approached him and flashed to him their identification cards saying that they were Japanese *Kempei-Tai*. They were Pazing, Doring and Romy, one of them being the accused. They said that the witness had in his possession a .38-caliber revolver with a license issued by the Philippine Constabulary. They arrested him and took him to the Far Eastern University. They said that they arrested him because he had a revolver and he was a guerrilla (16). The witness suggested that he be brought to Rizal Restaurant, the meeting place of different units of *Kempei-Tai*, telling them that he had there a friend by the name of Danding Gonzales, connected with the *Kempei-tai*. Pazing, Doring and Romy talked with Danding Gonzales at the Rizal Restaurant. After this talk, all of them, including the witness, went to the latter's house. Danding Gonzales told the witness to lie low until he could fix his case with the military police, saying that he would be released if he gave some money. The witness told Gonzales that his drawer was open and that they could get the amount of money that was in it. Gonzales got ₱2,000 and gave it to Pazing. After that they went away and started huddling around. They took also the witness' revolver. (17). Eligio Custodio, brother of the witness, was at the latter's office when he was arrested by the three persons. Danding Gonzales was taken by the witness to the United States in 1937 and came back ahead of him. Gonzales was married to the sister-in-law of Imamura, a Japanese. (18). The witness often saw the accused in 1944. The three persons who arrested the witness, including the accused, all had a .45-caliber chromium-plated revolver. (19) When they went back to the witness' house and Gonzales took the money from the drawer, the accused was present as well as the younger brother of the witness, Jose Custodio. His elder brother, Eligio Custodio, was the one present when the three persons went to the office for the first time. (20).

Eligio Custodio, 34, married, electrician, 386 Lipa, Manila, testified that at about 10 o'clock of October 6, 1944, he was in the office of his brother Cirilo Custodio. Three fellows

came in and took Cirilo because of the revolver they asked. (21). They took him to the Far Eastern University. The witness does not know the names of the three persons but can identify them, and one of them is the accused. His brother returned with the same fellows the same morning and, as soon as they arrived, the witness left at once. The accused has an identification mark a mole on his left cheek. The three persons who arrested his brothers said that they were *Kempei-Tai*. (2).

Jose Custodio, 25, married, 906-A Rizal Avenue, Manila, testified that on October 6, 1944, when he came back to the office, there were four men therein. Danding Gonzales took ₱2,000 from the drawer and gave them to the other men. Among those present was Romy, the accused. (23). The witness remembers him because he has a mole under the left eye. After the delivery of the money, the four persons left the office. Danding Gonzales told his brother Cirilo not to get away and that he should stay in the office so that in case he was needed they could find him immediately. The money was handed by Gonzales over to one of the other three. The accused remained in the office for about half an hour. (24).

Vicente Gama, 35, married, manager of Metro Garden and Grill, 212 Mabini, Mandaluyong, testified that in September and October, 1944, he was the assistant manager of the Rizal Restaurant and he was connected with the guerrilla, his work being to keep a close watch on the Japanese movements and as to where they were putting their war materials. (26). He knows the accused Romeo Apostol, alias Romy, because he used to stay in the restaurant and even slept therein. He used to join the buy-and-sell people and sometimes was with the Japanese spies composed of Danding Gonzales, Pazing, Doring and others. (27). Danding Gonzales was the head of the group. The witness saw the accused every day because he was living in the Rizal Restaurant, paying for his lodging. The group used to go with the military police and to arrest persons and bring them to the restaurant to be investigated and sometimes they brought them to Fort Santiago. (28). They investigated Antonio Azarraga in the restaurant. He was suspected as a guerrilla supporter. He was taken from his house. After the investigation he was brought to the Central Hotel. The witness saw that he was taken there. After that he did not hear anything about him. Cirilo Custodio is the witness' *compadre*. On October 6, 1944, he was taken to the Rizal Restaurant by Pazing, Romy, and others. Danding Gonzales joined them. The witness did not hear what they had talked about. (29). The last time the witness saw the accused was in November, 1944. He knew him since July of the same year. (32).

Leodegario Scarlet, 29, married, dental technician, 1752 M. Natividad, Manila, testified that he knows the accused whom he used to see in the Central Restaurant during the

Japanese occupation. He sometimes was with Mariano Cabrera and other fellow, and Cabrera told the witness that they were informers. (34).

Maria Saquitang, recalled as a witness, said that her brother Antonio Azarraga, was helping the guerrilla in the mountains by supplying them with food and money. (38). His rank was that of a captain, as shown in Exhibit A, which she hid in a picture frame. Both her brother and husband went every month to the mountain to bring some foods. Her husband was a first lieutenant. (39, 40).

Isidro L. Bejuncos, 46, married, public prosecutor, 1116-B, B. Governor Forbes, Manila, testified that he has known Col. James M. Bays, chief of staff of the U. S. Army, because the witness had been a member of the resistance movement. The witness has been acquainted with Bays for about 20 years and both were working together in the resistance movement under the same American units. After the capture of Col. Straugh, the witness separated from the unit. He is familiar with the signature of Bays, and that which appears in Exhibit A is his signature. (42).

The accused, as lone witness for the defense, testified that it is not true that he went with companions to the house of Maria Saquitang on September 6, 1944, and that he does not know anything about the arrest of Antonio Azarraga. (46). The accused saw Maria Saquitang in December, 1946, at the prosecutor's office where "I heard and felt that I was being identified by her." (47). The witness saw in the office of the special prosecutor Mrs. Azarraga and Mrs. Saquitang. (48). About the arrest of Cirilo Custodio on October 6, 1944, testified to by the witness for the prosecution, the accused said that "I do not know anything of what happened to him because I was just forced to go with them," referring to Vicente Gama and Eduardo Gonzales. When Cirilo Custodio left his place to be delivered to the Far Eastern University, the accused was with Vicente Gama and Eduardo Gonzales "because I was the driver of the dokar. Being a driver, I just stayed in the driver's seat." Prior to reaching the office of Cirilo Custodio at 927 Rizal Avenue, he came from Rizal Restaurant. (49). The dokar belonged to Macario Bing's General Merchandise. "I am not a hired driver of that dokar but I was paid as in charge of the delivery. Macario Bing, Eduardo Gonzales and Vicente Gama were companions. They were the three leading the special agents of the Japanese Military Police." Macario Bing was the capitalist of a buy-and-sell business, in which the accused was an employee in charge of the delivery of goods. "After the delivery of the welding rods from Macario Bing to one of the commercial houses in Dasmariñas, I was told to return to him at the Rizal Restaurant. I was asked by Danding and Vicente Gama to take them to the place of Custodio." (50). The witness had nothing to do about the arrest of Cirilo Custodio. "I went there only

because I was forced by Eduardo Gonzales and Vicente Gama who were riding in the dokar." The witness does not know anything about the alleged surrender of Cirilo Custodio to Kataniwa, a Japanese in the Far Eastern University. Regarding the ₱2,000 given by Cirilo Custodio and testified to by the witnesses for the prosecution, the accused said: "I saw that he (Cirilo Custodio) was released because it was through me that Danding received the money from Custodio." (51). "I was just asked to deliver" the money. It was not delivered directly to Eduardo Gonzales because Eduardo Gonzales was talking to somebody at that time in the Rizal Restaurant. The money was given "in the dokar where I was sitting," about 6 or 7 meters away, and Danding was inside the restaurant and I was inside the dokar. The witness identified his signature and thumbmarks on page 3 of Exhibit B. (53). The statement in Exhibit B that from November, 1944 to January, 1945, the companions of the accused in Pagsanjan were Danding Evangelista and the owner of a gambling den, was not given by the witness to the guerrilla officer who investigated him. The statement was given by Danding Evangelista. The statement in Exhibit B that the accused was a Japanese spy from August to October, 1944, was not given by him. Asked about the statement that "since I was pointed as a Japanese spy, I have to look after Macario Bing and watch his enemies" appearing on page 3, the accused after having been asked whether he made the statement or not said: "What I can state only is that I was forced to sign this because I was maltreated." The witness does not know the Macario Bing mentioned in his testimony. (54). "There were many Japanese entering the office of Macario Bing" during the Japanese occupation. The accused was asked if he made the following statement to the guerrilla officer who investigated him appearing on page 2 of Exhibit B: "I became a Japanese spy to save my life because I was arrested by a Filipino and three Japanese on or about June 5, 1944, and confined in Fort Santiago charging me with robbing Japanese truck tires in Leveriza." The answer was: "I do not know about that." When the witness signed Exhibit B "there was only one paper and they lighted a match to give light to the place where I have to sign my name." (55). "There were many questions propounded to me and I can not remember any of them because there were many who took turns in questioning me." Rizal Restaurant was located not far from the corner of Rizal Avenue and Azcarraga near the Central Hotel. When Cirilo Custodio was taken, "they made me stop in front of the Funeraria Nacional." The witness passed by the Rizal Restaurant only to take Bing, but he did not see him. He was forced by Vicente Gama and Eduardo Gonzales to take them in the dokar, because they said that they had the permission of Macario Bing to use it. (56). "They

made me drive it for them and told me to go to the place of Cirilo Custodio near the Funeraria Nacional on Rizal Avenue." They stayed there for about 20 minutes. "They made me wait for them" from the place they went "to the Far Eastern. They made me drive for them." After a while "Vicente Gama went down, they made me bring them to Rizal Restaurant." The witness does not know why Cirilo Custodio was taken to the Far Eastern University. (57). Upon reaching the Rizal Restaurant, Custodio handed the money over to the accused in the dokar. Custodio said to the accused: "Here is the money which is given to you by Danding." "This money is given to you for Danding." The accused work in the house of Macario Bing from August to October, 1944. Macario Bing, Eduardo Gonzales and Vicente Gama "were companions and were the leaders of the Japanese." (58). The witness knew this from the time he was working for Macario Bing. In October, he went to Pagsanjan with Danding Evangelista. "We established a gambling den." The money he received from Custodio was given by him to Danding, after which he went away and it was 11 o'clock in the morning. When they left the Rizal Restaurant to the place of Cirilo Custodio it was more or less 8 o'clock in the morning. At 7 o'clock the accused delivered welding rods in Dasmariñas to Hito Shosen, a Japanese firm. At 11 o'clock the accused went from the Rizal Restaurant to his office in Elizondo, Quiapo. (59). The accused is a first year high school graduate. (60).

With the permission of the trial court, the prosecution called two witnesses who, in substance, testified:

Dionisio Abando, 39, married, merchant, Pagsanjan, Laguna, identified his signature as a witness in the marriage certificate Exhibit C of Romeo Apostol. He identified also Apostol's signature therein and that of Adela Sarabia whom he married and that of Remedios Villareal, the other witness. (65-67).

Salvador R. Abuig, 28 married, proprietor, 3279 Int. 14, Juan Luna, Manila, testified that he ordered Victoriano Mateo to arrest the accused. The witness was captain of A Company, Ramsey's First Battalion. The accused was arrested in Caloocan and brought to the headquarters at 2283 Juan Luna. The accused said that he was a Filipino. Pages 1 and 2 of Exhibit B must have been mixed up. The original typewritten words at the foot of page 2 are due to the fact that the carbon paper is shorter than the type-writing paper. It is not true that the accused was tortured by the guerrillas who forced him to sign Exhibit B. "As evidence of that, his wife and mother-in-law were fed by us. And when we were taking his statement Judge Geronimo was there as our military adviser." (68-71). Exhibit B was typewritten by Lt. Rufino Lim Cullough. (75).

Exhibit A appears to be an appointment of Antonio R. Azarraga as captain by Col. J. M. Bays, chief of staff under the authority of Major General E. P. Ellworth, Fil-American irregular troops, dated July 5, 1944.

Exhibit B reads as follows:

"EAST CENTRAL LUZON GUERRILLA AREA
"HEADQUARTER, FIRST INFANTRY
"MMD

"Manila, February 13, 1945

"Subject Espionage

"Case No. 2

"Name—Romeo Apostol, born Oct. 7, 1920, Tondo, Manila, 24 yrs. old
Identification—Height 68 inch. Weight 120 lbs. Mongo size black mole below the left eye. Three scars on the left cheek as in diagram below.

"Father—Bibiano Apostol, born in Cebu, died at age of 27 at PGH.
"Mother—Margarita Salazar, born in San Miguel, Bulacan, died at San Miguel, Bulacan at the age of 27.

"Wife—Adela Saravia, residing at Sampalucan, Caloocan, Gr. Manila.
"Statement: From November, 1944 to January 1945 my companion in Pagsanjan, Laguna, is Mr. Danding Evangelista. In Pagsanjan, Laguna I am the owner of a gambling den. From August 1944 to October 1944 I am a Japanese spy. As a spy I receive no salary but with a compensation of (4) gantas of rice a week. The following are Japanese spies at Air Port:

"Member of the Organization Quartered at the Central Hotel.

"1. Baluyot—He is considered a No. 1 spy. I had known him as a smart guy. He used to plant evidences in every accused person they arrested. He oftentimes punished the accused, he got money from them and later on put them to jail. Racketeer.

"2. Max Santos—Wife Mary, a prostitute. This guy is the one planting evidences in every person they like to catch aside from it he is also the verdugo of the Baluyot's organization. He is always with Baluyot.

"3. Mike—is the one racketing the relatives of the accused persons promising them that the accused person will soon be set free. One of Baluyot's men.

"4. Antonio Lee—is also the one racketing the relatives of the accused person by promising them that the accused will soon be set free. He is a chinese mestizo.

"5. Angel Barcelona—He is as I know is considered a tough confiscator. He confiscate whatever he likes from the pityful persons by force.

"The following are another group also quartered at Central Hotel:

"6. Alvaro Santos—Residing at Peacock Hotel, Ermita, Manila. A tough guy. He is also the manager of said hotel.

"7. Carding—A chinese mestizo. Racketeer. He is a buy and sell to Macario Bing.

"8. Eleuterio—Racketeer. I cannot give any other information other than I know that he is residing at Calero.

"9. Francisco Alias Frank—A racketeer.

"10. Pacing—He is residing at Padre Faura, Ermita, Manila. He is the one who shot a guy by the name of Anog (a guerrilla).

"11. Cortez—Baluyot's man. A chinese mestizo residing at Oroquieta, Manila. A framer who used to act as a pistol buyer, but whenever the pistol is presented to them they arrested the seller.

"12. Luis—A chinese, manager of Rizal Restaurant. He is a swell guy but also an M. P. member.

"13. Romeo Siojo—Baluyot's man. I have no other information aside from the fact that he is also an M. P.

"The following are another group located at Elizondo, Quiapo, Manila. Tel. No. 2-41-63.

"14. Macario Bing—A chinese mestizo and a general merchant (buy and sell). He is the buyer of the stolen goods and he is the one who is directly connected with Fort Santiago. He use to give information to the Japanese. As I still remember when I was convicted at the city jail in the year 1940 I found out two real spies of the Japs. Because I found out that they were the ones who sold the map of the Philippines to the Japanese. They are Ignacio Agbay and Macario Cabrera.

"In two months of my spy service the above names were known to me personally as Japanese spies in active duty. Baluyot is the head of the organization and Max Santos is the verdugo who inflict corporal punishment to any one arrested by them. I became a Japanese spy to save my life, as I was arrested by a Filipino and three Japanese on or about June 5, 1944 and confined in Fort Santiago, charging me with robbing Japanese truck tires in Leveriza street. We were then caught red handed as we have the truck tires with us. My companion escaped. The cochero pointed us to the Japanese. He further pointed me to have bullets in my possession, in fact the bullets were found in my pockets. Then I was beaten and tortured by the Japanese in Fort Santiago. When they could not get anything from me, they then set me free on or about June 30, 1944. The whole month of July 1944 after I was set free, I was then put under observation and present myself every other day to the Military Police in Fort Santiago. Then I was placed as body-guard of Macario Bing. On the early part of Sept. 1944 I was given an identification card, in which Japanese characters were written, and a written statement stating that the above named person is permitted to carry fire-arms. But I was not immediately given fire-arms until after two weeks. I was given a .38-automatic then Macario changed it with a .45 caliber automatic. The said revolver was sold by me after I quit my job as Japanese spy. An incident took place in line with my duty as Japanese spy when one Oscar, identified by me as Ramsey's runner was cornered by Japanese and some of my companions behind the State Theater when they were rounded there. I immediately approached Oscar, took his pistol and hid it from the Japanese. I then certify that Oscar is not a guerrilla and is a good peaceful person. Oscar was turned loose and his pistol was returned to him after his release on that same day. A week after his release he asked for some .45 caliber bullets. I also supplied him. As I had been in the habit of robbing the Japanese as it was my means of living, I seldom meet Oscar on calle Florentino Torres Street and the last time I met him was on or about September, 1944.

"Since I was appointed as Japanese spy I have to look after Macario Bing and watch his enemies but I have never reveal anything against my countrymen. Macario Bing, a Buy and Sell man and a Japanese spy gave me ₱100 a time and sometime a ganta of rice.

"I hereby accept the above statement as correct and certify that same is my free act and deed.

(Sgd.) ROMEO APOSTOL
"(Accused)

"Subscribed and sworn to before me by Romeo Apostol who is known to me to be the same person who executed the foregoing statement and acknowledged same as his free act and deed.

(Sgd.) "SALVADOR R. ABUEG
Captain Co. A 1st Infantry
ECLGA
MMD."

Upon the evidence on record, it appears conclusively that appellant, a Filipino citizen, took active part in the arrest on September 6, 1944, of Antonio Azarraga a person helping the guerrilla, who after having been confined at the Central Hotel was never heard of again. Maria A. Saquitang and Trinidad Azarraga, sister and wife respectively of Antonio Azarraga, who testified about the arrest, identified the accused by the mole and scar he has under his left eye. The giving of the sum of ₱8,000 by Maria A. Saquitang at the Central Hotel in the presence of the accused to Jose Paza, one of his companions who promised the release of Antonio Azarraga, cannot be taken into consideration, no other witness having corroborated Maria A. Saquitang on said fact. Her husband who, according to her, went to the hotel in her company for the purpose of handing the money over to Jose Paza, did not testify.

It has also been conclusively proved by the testimony of Cirilo and Eligio Custodio that the accused was among those who arrested Cirilo Custodio, took him to the Far Eastern University, then to the Rizal Restaurant for a conference with Danding Gonzales leader of Japanese spies, and then brought again to his office, 927 Rizal Avenue, from where he was taken, and that after said Cirilo Custodio had given the amount of ₱2,000, he was released. These facts were substantially corroborated by the accused himself, although he had tried to make us believe that his participation was simply that of being the driver of the dokar used for the arrest and that the ₱2,000, as consideration for the release of Cirilo Custodio, was handed by the latter over to the accused who immediately delivered it to Danding Gonzales. The accused testified that he was in the service of Macario Bing, one of the leaders of Japanese spies, and in whose office many Japanese used to enter, and that he was aware of these facts at the time he was working for Macario Bing.

The testimony of the accused and his affidavit Exhibit B have made more conclusive the facts proved by the witnesses for the prosecution that the accused served as a Japanese spy at the time Antonio Azarraga and Cirilo Custodio were arrested and that their arrest was undertaken to give aid and comfort to the enemy.

The facts proved constitute the crime of treason as punished by article 114 of the Revised Penal Code.

The trial court sentenced appellant to *reclusión perpetua*. with the accessories of the law, and to pay a fine of ₱1,000 and the costs, crediting to him one-half of the preventive confinement he has suffered. The judgment, being in accordance with law, is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment affirmed.

[No. L-1562. November 26, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs.
OLEGARIO YADAON (*alias* GARION), defendant and appellant.

1. CRIMINAL LAW; MURDER; AGGRAVATING CIRCUMSTANCE OF TREACHERY.—Treachery characterized the crime. Even if the deceased was already awake when the aggression commenced, and even if there was light, it is nevertheless true that H was down on his back, still drowsy, and unarmed. He was unaware of the defendant's intention; the blows were delivered of a sudden and without warning. This was the essence of the offended party's dying statement. The accused thus employed means and methods which tended directly and specifically to insure his criminal objective without risk to himself arising from the defense which the offended party might make.
2. ID.; ID.; EVIDENCE; PREMEDITATION.—The evidence is insufficient to establish evident premeditation. It fails to show that the accused meditated and reflected on his purpose to commit the crime sufficiently long to permit the formation of a deliberate determination.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, J.

The facts are stated in the opinion of the court.

Ramon Quisumbing for appellant.

Assistant Solicitor General Carmelino G. Alvendia and
Solicitor Manuel Tomacruz for appellee.

TUASON, J.:

Anastacio Hichon was killed with a pointed, cutting instrument. He sustained eleven wounds one of which was fatal—a “punctured wound on the abdominal region causing the intestines to come out.” The other wounds were in the head, arms and hands. Defendant-appellant’s defense is that Hichon’s injuries were caused by Hichon’s own bolo in the course of a struggle between him and the deceased for its possession.

The evidence for the prosecution was furnished by Magdaleno Hilvano, his wife Segunda Bacungan, and his step-daughter Asuncion Tañala. Also, the deceased made a dying declaration.

In substance, the witnesses testified that on June 16, 1942, in barrio Guintarcan, municipality of Villareal, Samar, where they had evacuated, Anastacio Hichon was hired by and worked for them. Having been overtaken by night and rain, Hichon slept in their shack, a one-room affair. Maria Yadaon, Segunda Bacungan’s niece and defendant’s mother, was staying with Magdaleno Hilvano and his family and slept in that shack, too, on the night of the crime. All of them (Hilvano and his family, Hichon and defendant’s mother) slept on the floor, Hichon near the door, leaving an oil lamp burning.

About midnight, Asuncion Tañala and Magdaleno Hilvano were aroused by a voice threatening to kill everyone

in the house; it was the defendant's voice. When they opened their eyes the light was out, and Magdaleno saw the accused going down and asking Hichon if he was already dead. Segunda was awakened by her husband and heard defendant's voice coming from the seashore; he was shouting.

The three witnesses, not knowing exactly what happened, fled from the house. Later, they borrowed matches, returned to the house lighted the lamp, saw Anastacio Hichon bleeding, his intestines out. Hichon named the accused as his assailant.

The deceased's dying declaration, made shortly before he expired at noon the next day, recites that the declarant was awakened when the defendant asked him, "Are you Tasio?" that this question was quickly followed by a thrust in his abdomen; that he recognized the accused by the light.

Defendant's and his mother's version of the killing is that both of them slept with the Hilvano family in the latter's shack. At that time defendant was awoken from his sleep by his mother's scream asking for help. Opening his eyes, he saw Hichon lying down beside and embracing her. He and Hichon stood up, Hichon unsheathed his bolo and struck at him hitting him in the knee. He and Hichon grappled with each other during the scuffle Hichon was wounded with his own weapon.

Reduced to its essentials, the question is, Who was in the house and who was the intruder? The particulars about the wounding and the struggle are absorbed by this question and are inconsequential except in one minor respect. If the deceased was the trespasser, justification for defendant to kill him may be conceded. If it was the defendant, then the charge of attempted rape against the deceased and the plea of justification, the basis of defendant's argument, can have no factual or legal validity, no matter how the wounds were inflicted. The details of the alleged struggle could at the most affect the qualification of the crime; that is, whether the killing was homicide or murder.

The trial court gave unqualified credence to the testimony of the witnesses for the prosecution. Leaving aside their manner and demeanor which only the trial court could appreciate, by reason of which its findings are accorded a high respect, these witnesses' relationship to the parties and other facts revealed by the record support the court's conclusion. While defendant's mother is a close relative of the witnesses and was a member of their household, the deceased was only a hired hand and was at the most Hilvano's godson. All things being equal, their natural leaning would be toward the accused and his mother. Only a strong sense of obligation to tell nothing but the truth could have impelled them to give evidence against their own kin and son of their housemate in favor of a hired worker.

The multitudes of the wounds, many of them serious, inflicted on the deceased, with the accused emerging unscathed except for an alleged injury in the knee, recoils at the defendant's and his mother's story of the happening. The number and nature of those wounds corroborate the direct evidence that the offended party was caught unaware by the suddenness of the assault, lying down and helpless.

As to the motive; the insinuation that the deceased made an attempt to rape Maria Yadaon and that he had been courting her suggests jealousy of his mother as the defendant's reason for his rash act. The influence of liquor may have added impetus to his decision. We find indication of intoxication in his behavior; in his threat to kill everyone in the house, which included his mother, and in the fact that even after he consummated his purpose, when he was out on the beach, he continued making threats in a loud voice.

Treachery characterized the crime. Even if the deceased was already awake when the aggression commenced, and even if there was light, it is nevertheless true that Hichon was down on his back, still drowsy, and unarmed. He was unaware of the defendant's intention; the blows were delivered of a sudden and without warning. This was the essence of the offended party's dying statement. The accused thus employed means and methods which tended directly and specifically to insure his criminal objective without risk to himself arising from the defense which the offended party might make.

However, the evidence is insufficient to establish evident premeditation. It fails to show that the accused meditated and reflected on his purpose to commit the crime sufficiently long to permit the formation of a deliberate determination. (U. S. vs. Bahatan, 34 Phil., 695.)

The appellant has been sentenced to *reclusión perpetua*, with the accessories of law, to indemnify the heirs of the deceased in the sum of ₱2,000, and to pay the costs. This sentence is in accordance with law and the facts. It should be and it is hereby affirmed, with costs.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ.

Judgment affirmed.

[No. L-1588. November 26, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FLORENCIO ALIBOTOD, defendant and appellant

CRIMINAL LAW; TREASON; EVIDENCE OF MEMBERSHIP AND PARTICIPATION IN A RAIDING PARTY AS AN ADHERENCE TO THE ENEMY; CASE AT BAR.—No valid reason has been given why the five witnesses for the prosecution had falsely to impute to appellant membership in a raiding party of armed Japanese soldiers and Filipinos in Japanese uniforms who raided and ransacked

on January 18, 1945, two houses in Calo, burning one of them, that of S. F. Their testimonies are convincing. They identified appellant as one of the members of the raiding party and they could not have been mistaken because the raids took place at about 7 o'clock in the morning when the day was already very clear, although it was then rainy and windy. The participation of the appellant in the raids in question constitutes the crime of treason, and shows that he adhered and gave aid and comfort to the enemy.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Lastrilla & Alidio for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Jesus A. Avanceña* for appellee.

PERFECTO, J.:

The trial court found appellant guilty of treason and sentenced him to *reclusión perpetua*, with the accessories prescribed by law, and to pay a fine of ₱10,000 and the costs.

Five witnesses testified for the prosecution.

At 7 o'clock on January 18, 1945, a group of Japanese soldiers, accompanied by several Filipinos in Japanese uniforms, among whom was appellant, carrying firearms, went to the house of Santiago Felismino in Calo, San Pablo City, for the purpose of apprehending the owner as a suspected guerrilla. With the raiding party were two captives, Francisco Felismino and Cipriano Calabon who were tied. The members of the raiding party went up the house searching for Santiago Felismino, who was absent, ransacked the place and looted therefrom many belongings. Severa Caseres, wife of Santiago Felismino, and other inmates were told to go down, and the house was burned down. The raiding party left taking with them two horses and some articles. These facts were testified to by Severa Caseres and her daughter Elena Felismino.

The same raiding party, including appellant, bringing with them captives Francisco Felismino and Cipriano Calabon, went to the house of Bonifacia Biglete, also located in Calo. Upon reaching the house, they ordered all the males (Luis, Cenon, Marcos, and Isidro Mendoza, Pedro Calapini and Alfredo Bunye) to go down, where they were tied. The house was ransacked. The raiding party took with them several things. Cenon Mendoza, while being investigated, was struck with the butt of a gun on his forehead. Then all the males were transferred to the house of Alfredo Bunye. These facts were testified to by Bonifacio Biglete and Pedro Calapini, corroborated by Isabel Biglete.

Pedro Calapini testified further that he was brought later to the seminary building in San Pablo, where he and Francisco Felismino were tortured, and that the next morning, upon hearing that they were to be executed, he attempted to escape by climbing to the ceiling of the room where he was

being kept a prisoner. The ceiling gave way and his fall brought about the discovery of his escape. Appellant repeatedly bayoneted him and he received a shot, fired by someone he does not know. He pretended to be dead, and was placed near a hole. Upon being left alone, he managed to crawl away and escape to his home, where his wounds were treated by a doctor. But the testimony of Calapini on these facts is not supported by any other testimony and, therefore, can not be considered. As regards the other males arrested in the house of Bonifacia, neither the latter nor Calapini has ever heard of them up to the trial of this case.

Appellant denied all the facts narrated by the witnesses for the prosecution, and alleged that on January 7, 1945, he was taken by the Japanese as forced laborer, and remained under such captivity until April, 1945, when he was able to escape, and was arrested by the guerrillas. Luciano Aragones testified that appellant was his partner in a business of selling sweet potatoes and vegetables and that in the afternoon of January 7, 1945, while he was sleeping, he was arrested by Japanese soldiers. Florencio Alibotod was also arrested in his house. They were taken to a place he does not know because the night was dark, and they were ordered to carry sacks of rice to places which they did not know. Four months later, an American artillery shell exploded in the vicinity of their place, and they were able to escape, and went together to a place known as Santa Ana, where they were met by a group of guerrillas and taken to the CIC.

No valid reason has been given why the five witnesses for the prosecution had falsely to impute to appellant membership in a raiding party of armed Japanese soldiers and Filipinos in Japanese uniforms who raided and ransacked on January 18, 1945, two houses in Calo, burning one of them, that of Santiago Felismino. Their testimonies are convincing. They identified appellant as one of the members of the raiding party, and they could not have been mistaken because the raids took place at about 7 o'clock in the morning, when the day was already very clear, although it was then rainy and windy.

The participation of the appellant in the raids in question constitutes the crime of treason, and shows that he adhered and gave aid and comfort to the enemy.

Although the witnesses for the prosecution have been mentioning him as a Makapili, a thing that appellant and his witness deny, the description is only a conclusion based on the fact that appellant was in Japanese uniform, armed, and in the company of Japanese soldiers, and the witnesses for the prosecution could not give any explanation to their deduction.

There is not enough basis on record to pronounce appellant as a Makapili, which is immaterial in view of the conclusion we reached.

The appealed decision, being supported by the facts proved and by the law, is affirmed, with costs.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment affirmed.

[No. L-1728. November 26, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ALBERTO SANTOS and ISABELO CRUZ, defendants and appellants.

CRIMINAL LAW; MURDER; EVIDENCE; ALIBI AS A DEFENSE.—An unconvincing alibi as a defense cannot overcome the straightforward testimonies of the witnesses for the prosecution who identified the accused as the author of the crime.

APPEAL from a judgment of the Court of First Instance of Isabela. Arranz, J.

The facts are stated in the opinion of the court.

Froilan Tolentino for appellant Santos.

Leonardo S. Victoria for appellant Cruz.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Ramon L. Avanceña* for appellee.

PERFECTO, J.:

Appellant Isabelo Cruz was accused, jointly with Cecilio Salomon and Vicente Delgado, of theft of large cattle in the justice of the peace court of Cordon, Isabela. They approached Geronimo Enriquez, chief of police of Cordon, to post a bail for them. Enriquez told them to approach old man Raymundo Feliciano, who had a bigger property, because his own land was not yet declared in his name for taxation purposes. They approached Raymundo Feliciano, but the latter refused to file a bond in their favor, "because you do not have the master mind with you." (154-155).

In the afternoon of February 24, 1946, Enriquez was warned by Cecilio Salomon and Vicente Delgado to be careful because Isabelo Cruz intended to kill him. On February 25, 1946, Monday night, at about 7 o'clock, Isabelo Cruz, Marcos Vargas and another unknown person, went to the house of Enriquez, calling him. Because of the warning he received, Enriquez did not answer. (146). Those who warned him stated that the reason why Isabelo Cruz wanted to kill him was "because I was the bodyguard of Raymundo Feliciano." (146-147). As Enriquez did not answer and refused to go down, the three individuals left. Twenty minutes after they had left, "I heard a detonation of firearm and three others successively thereafter." Not long

after, Casimiro Feliciano came to Enriquez telling him that his father, Raymundo Feliciano, was carried away by Isabolo Cruz and others. Enriquez advised Casimiro to run immediately to the MP or to the camp to report the matter, and Casimiro ran to the camp of the Ifugao soldiers. (147-148).

Between three and four o'clock in the afternoon of February 25, 1946, while Casimiro Feliciano was splitting bamboo in his home, appellant Alberto Santos asked him, "Is your father in?" To which he answered, "Yes, he is there." After this answer, Alberto Santos left.

That same night, after Enriquez refused to heed the call of Isabolo Cruz and his two companions, Alberto Santos entered the house of Raymundo Feliciano. He asked for him. Elena Soriano, who was then playing cards with Lucia and Casimiro Feliciano, answered that he was sleeping inside the room. Alberto took his revolver, told the inmates of the house not to move as the house was surrounded with soldiers, entered the room, and dragged therefrom Raymundo Feliciano. Upon reaching the stairs, they were met by Isabolo Cruz who helped in dragging Raymundo downstairs. Isabolo Cruz ordered Emeteria Bartolome, wife of Raymundo, and Casimiro Feliciano: "Do not follow" and aimed his revolver at them. After saying that, he closed the door. (74-75).

Downstairs appellants were joined by five other individuals. Casimiro heard his father ask them: "What is the matter, Bentong, Belong? Why, what is this you are doing to me? Why are you pulling me? Is it that you stole a carabao?" He did not hear any answer, but heard that his father was repeatedly boxed. He saw him blindfolded by Alberto Santos. The group went to the southwestern part of the house. After a while, a gunshot was heard, followed by three other successive gunshots. (75-77). Soon thereafter, Casimiro reported the kidnapping to the authorities. Soldiers were immediately sent to investigate, but they could not proceed that same night because the kidnapers were armed, and the place was dark and shruby.

The next morning, the dead body of Raymundo Feliciano was found lying in a guava grove with gunshot wounds. At the place were found two empty .45-caliber shells. That same night, sometime after the shooting, Teofilo Bugtong, a policeman of Cordon, saw Alberto Santos driving a truck loaded with five carabaos and two cows. Among his passengers were Marcos Vargas, Vicente Delgado and Raymundo de Vera, the latter sitting beside him. Bugtong focused his flashlight at the truck. Marcos Vargas told him: "If you like to check the truck, you better have it checked outside the town," holding Bugtong's hand, which he had to pull away from him. Immediately the

truck started and the driver increased the velocity of the truck. (169-171).

Appellant Alberto Santos offered an alibi as a defense, but it is unconvincing, and it cannot overcome the straightforward testimonies of the witnesses for the prosecution who identified him as the one who took Raymundo Feliciano from his room and then dragged him downstairs with the help of Isabolo Cruz. He was the one who in the afternoon immediately before the night of the kidnaping and killing, inquired from Casimiro Feliciano whether his father was at home. He was the one who in the night of the kidnapping entered the house of Raymundo Feliciano, asked for him, and ordered the inmates, some of whom were playing cards, not to move, because the house was surrounded by soldiers. He was the one who, after the crime was committed, drove in a truck away from Cordon his companions with several heads of cattle.

Isabolo Cruz, in a way trying to support the alibi of Alberto Santos, concocted a version of the kidnapping and killing, which is more childish than anything. His story runs as follows: "On the night of February 25, 1946, at about 8 o'clock, Marcos Vargas came to my house and invited me to drink *meding* (a native wine). I accepted his invitation. We went to the road. He told me that we had to pass for his companions. I asked him, 'Where is your companion anyway?' He said, 'They are here,' and he immediately held my right hand and pulled me. As soon as we reached a distance of about 100 meters from the place where we were, he whistled two times. Two men from a hiding place came out, approached me and held the collar of my sweater. They stuck the barrels of their revolvers on both sides of my body. The unknown men asked me, 'What, will you follow us or not?' I answered them, 'Why, where are we going?' They told me, 'We will go to kill old man Raymundo.' I answered them, 'I cannot kill a person who does not have any fault.' They told me that if I would not follow them, they would kill me. Because of fear, I was forced to follow them to the house of Raymundo Feliciano. Upon reaching the premises of the house of old man Raymundo Feliciano, at a distance of about five meters away from the house, Marcos Vargas and his two unknown companions whispering told me that I would go upstairs and bring down the house old man Raymundo Feliciano. I told them, 'I cannot go up the house because every member of the family including the children knows me and aside from that, they are my relatives.' They told me to call for the old man Raymundo Feliciano to peep through the window so that upon peeping, they would immediately shoot him. I told them that I could not do it because even the youngest child knows my voice. Marcos Vargas held my right arm and pulled me near the stairs.

(261-263). The two unknown men went up the house and upon reaching the door, they kicked it. One entered the house aiming his revolver inside the house saying, 'Nobody should move.' After a few moments, the unknown man carried with him old man Raymundo Feliciano. He lifted old man Feliciano by carrying him in the arms. He delivered old man Raymundo Feliciano to the other unknown man who was hiding behind the door. As soon as old man Raymundo Feliciano was brought outside the door, he was made to stand on the stairs. Immediately thereafter, one of the unknown men closed the door inserting his hand with the revolver inside the house saying, 'Nobody should follow.' The unknown man immediately shut the door and then the two unknown men carried in their arms old man Raymundo Feliciano. (264). Marcos Vargas held me on my right arm and pulled me downstairs, and brought me southward. We went ahead to a place with a distance of 150 meters, more or less, from the house of Raymundo Feliciano. Behind, I heard a firearm detonation. I turned around and saw old man Raymundo Feliciano turning around. He immediately fell down. The two unknown men shot him two times. My companions ran away. I returned home. Marcos Vargas followed the two unknown men running. (265). I could not sleep because of fear." (266).

The uselessness of Isabolo Cruz for the avowed purpose of Marcos Vargas and his two companions makes the story unbelievable. The presence and company of Isabolo Cruz had the effect of hampering the plans of Marcos Vargas and his two companions, because they had to waste energy in holding up an unwilling partner and assistant in the commission of the crime, while without him they could have, as they did in spite of him, carried out the plan of killing Raymundo Feliciano. The story appears to have been concocted to show the absence of Alberto Santos and the involuntary participation of Isabolo Cruz in the kidnapping and killing of Raymundo Feliciano.

Appellant's guilt has been proved beyond all reasonable doubt. The trial court sentenced them to *reclusión perpetua* and to indemnify jointly and severally the heirs of the deceased in the amount of ₱2,000 with the accessory penalty of the law, and each to pay one-half of the costs. The prosecution recommends that the indemnity be raised to the sum of ₱6,000, according to the rule laid down in *People vs. Amansec. L-927* (45 Off. Gaz. Supp. to No. 9, p. 51). The recommendation is well taken. The appealed judgment, modified with the increase of indemnity as recommended, is affirmed with costs against appellant.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment modified.

[No. L-1960. November 26, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs.
FLORENTINO ABILONG, defendant and appellant

1. CRIMINAL LAW; EVASION OF SERVICE OF SENTENCE; REVISED PENAL CODE; ENGLISH AND SPANISH TEXT OF ARTICLE 157, COMPARED.—Inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs. It is clear that the word "imprisonment" used in the English text is a wrong or erroneous translation of the phrase "sufriendo privación de libertad" used in the Spanish text. It is equally clear that although the Solicitor General impliedly admits *destierro* as not constituting imprisonment, it is a deprivation of liberty, though partial, in the sense that as in the present case, the appellant by his sentence of *destierro* was deprived of the liberty to enter the City of Manila.
2. Id.; Id.; How COMMITTED; CASE AT BAR.—One who, sentenced to *destierro* by virtue of final judgment, and prohibited from entering the City of Manila, enters said city within the period of his sentence, is guilty of evasion of sentence under article 157, Revised Penal Code (Spanish text).

APPEAL from a judgment of the Court of First Instance of Manila. Barrios, J.

The facts are stated in the opinion of the court.

Carlos Perfecto for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr., and *Solicitor Manuel Tomacruz* for appellee.

MONTEMAYOR, J.:

Florentino Abilong was charged in the Court of First Instance of Manila with evasion of service of sentence under the following information:

"That on or about the 17th day of September, 1947, in the City of Manila, Philippines, the said accused, being then a convict sentenced and ordered to serve two (2) years, four (4) months and one (1) day of *destierro* during which he should not enter any place within the radius of 100 kilometers from the City of Manila, by virtue of final judgment rendered by the municipal court on April 5, 1946, in criminal case No. B-4795 for attempted robbery, did then and there wilfully, unlawfully and feloniously evade the service of said sentence by going beyond the limits made against him and commit vagrancy."

"Contrary to law."

Upon arraignment he pleaded guilty and was sentenced to two (2) years, four (4) months and one (1) day of *prisión correccional*, with the accessory penalties of the law and to pay the costs. He is appealing from that decision with the following assignment of error:

1. The lower court erred in imposing a penalty on the accused under article 157 of the Revised Penal Code, which does not cover evasion of service of "*destierro*."

Counsel for the appellant contends that a person like the accused evading a sentence of *destierro* is not criminally liable under the provisions of the Revised Penal Code,

particularly article 157 of the said Code for the reason that said article 157 refers only to persons who are imprisoned in a penal institution and completely deprived of their liberty. He bases his contention on the word "imprisonment" used in the English text of said article which in part reads as follows:

"Evasion of service of sentence.—The penalty of prisión correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment."

The Solicitor General in his brief says that had the original text of the Revised Penal Code been in the English language, then the theory of the appellant could be upheld. However, it is the Spanish text that is controlling in case of doubt. The Spanish text of article 157 in part reads thus:

*"ART. 157. Quebrantamiento de sentencia.—Sera castigado con prisión correccional en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere sufriendo privación de libertad por sentencia firme; * * *."*

We agree with the Solicitor General that inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs (*People vs. Manaba*, 58 Phil., 665, 668). It is clear that the word "imprisonment" used in the English text is a wrong or erroneous translation of the phrase "sufriendo privación de libertad" used in the Spanish text. It is equally clear that although the Solicitor General impliedly admits *destierro* as not constituting imprisonment, it is a deprivation of liberty, though partial; in the sense that as in the present case, the appellant by his sentence of *destierro* was deprived of the liberty to enter the City of Manila. This view has been adopted in the case of *People vs. Samonte*, No. 36559 (July 26, 1932; 57 Phil., 968) wherein this Court held, as quoted in the brief of the Solicitor General that "it is clear that a person under sentence of *destierro* is suffering deprivation of his liberty and escapes from the restrictions of the penalty when he enters the prohibited area." Said ruling in that case was ratified by this Court, though, indirectly in the case of *People vs. Jose de Jesus*, L-1414, April 16, 1948 (45 Off. Gaz. Supp. to No. 9, p. 370), where it was held that one evades the service of his sentence of *destierro* when he enters the prohibited area specified in the judgment of conviction, and he cannot invoke the provisions of the Indeterminate Sentence Law which provides that its provisions do not apply to those who shall have escaped from the confinement or evaded sentence.

In conclusion we find and hold that the appellant is guilty of evasion of service of sentence under article 157 of the Revised Penal Code (Spanish text), in that during the period of his sentence of *destierro* by virtue of final

judgment wherein he was prohibited from entering the City of Manila, he entered said City.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs against the appellant. So ordered.

Moran, C. J., Parás, Feria, Pablo, Bengzon, and Tuason, JJ., concur.

PERFECTO, J., dissenting:

The legal question raised in this case is whether or not appellant, for having violated his judgment of *destierro* rendered by the Municipal Court of Manila, can be sentenced under article 157 of the Revised Penal Code which reads as follows:

"Evasion of service of sentence.—The penalty of prisión correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be prisión correccional in its maximum period."

Appellant invokes in his favor the negative opinion of author Guillermo Guevara (Revised Penal Code, 1946, p. 322). This negative position is supported by another author, Ambrosio Padilla (Revised Penal Code annotated, p. 474).

The prosecution invokes the decision of this Court in People vs. De Jesus, L-1414, promulgated April 16, 1948, but said decision has no application because in said case the legal question involved in the case at bar was not raised. The Supreme Court did not consider the question of interpretation of the wording of article 157. Undoubtedly, there was occasion for considering the question, but the Court nevertheless failed to do so. This failure to see the question, at the time, is only an evidence that the tribunal is composed of human beings for whom infallibility is beyond reach.

The prosecution maintains that appellant's contention, supported by two authors who have considered the question, although tenable under the English text of article 157, it is not so under the Spanish text, which is the one controlling because the Revised Penal Code was originally enacted by the Legislature in Spanish.

There is no quarrel, therefore, that under the above-quoted English text, the appellant is entitled to acquittal. The question now is whether or not the Spanish text conveys a thing different from that which can be read in the English text. The Spanish text reads as follows:

"ART. 157. *Quebrantamiento de sentencia.*—Sera castigado con prisión correccional en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere sufriendo privación de libertad por sentencia firme; pero si la evasión o fuga se hubiere llevado a efecto con escalamiento, fractura de puertas, ventanas, verjas, paredes, techos o suelos, o empleando ganzuas, llaves falsas, disfraz, engaño, violencia o intimidación, o poniendose de acuerdo con otros sentenciados o dependientes del establecimiento donde a hallare recluido la pena sera prisión correccional en su grado maximo."

The question boils down to the words "fugandose mientras estuviere sufriendo privación de libertad por sentencia firme," which are translated into English "by escaping during the term of his imprisonment by reason of final judgment." The prosecution contends that the words "privación de libertad" in the Spanish text is not the same as the word "imprisonment" in the English text, and that while "imprisonment" cannot include *destierro*, "privación de libertad" may include it.

The reason is, however, the result of a partial point of view, because it obliterates the grammatical, logical, ideological function of the words "fugandose" and "by escaping" in the Spanish and English texts, respectively. There should not be any question that, whatever meaning we may want to give to the words "privación de libertad," it has to be conditioned by the verb "fugandose," (by escaping). "Privación de libertad" cannot be considered independently of "fugandose."

There seems to be no question that the Spanish "fugandose" is correctly translated into the English "by escaping." Now, is there any sense in escaping from *destierro* or banishment, where there is no enclosure binding the hypothetical fugitive? "Fugandose" is one of the forms of the Spanish verb "fugar," to escape. The specific idea of "evasion" or "escape" is reiterated by the use of said words after the semi-colon in the Spanish text and after the first period in the English text. Either the verb "to escape" or the substantive noun "escape" essentially presupposes some kind of imprisonment or confinement, except figuratively, and Article 157 does not talk in metaphors or parables.

"To escape" means "to get away, as by flight or other conscious effort; to break away, get free, or get clear, from or out of detention, danger, discomfort, or the like; as to escape from prison. To issue from confinement or enclosure of any sort; as gas escapes from the mains." (Webster's New International Dictionary.)

"Escape" means "act of escaping, or fact or having escaped; evasion of or deliverance from injury or any civil; also the means of escape. The unlawful departure of a prisoner from the limits of his custody. When the prisoner gets out of prison and unlawfully regains his liberty,

it is an actual escape." (Webster's New International Dictionary.)

"Evasion" means "escape." (Webster's New International Dictionary.)

The "destierro" imposed on appellant banished him from Manila alone, and he was free to stay in all the remaining parts of the country, and to go and stay in any part of the globe outside the country. With freedom to move all over the world, it is farfetched to allege that he is in any confinement from which he could escape.

The words "privación de libertad" have been correctly translated into the English "imprisonment," which gives the idea exactly conveyed by "privacion de libertad" in the Spanish text. Undoubtedly, the drafters of the latter could have had used a more precise Spanish word, but the literary error cannot be taken as a pretext to give to the less precise words a broader meaning than is usually given to them.

"Privación de libertad," literally meaning "deprivation of liberty or freedom," has always been used by jurist using the Spanish language to mean "imprisonment." They have never given them the unbounded philosophical scope that would lead to irretrievable absurdities.

Under that unlimited scope, no single individual in the more than two billion inhabitants of the world can be considered free, as the freest citizen of the freest country is subject to many limitations or deprivations of liberty. Under the prosecution's theory, should an accused, sentenced to pay a fine of one peso, evade the payment of it, because the fine deprives him of liberty to dispose of his one peso, he will be liable to be punished under article 157 of the Revised Penal Code to imprisonment of from more than two years to six years. The iniquity and cruelty of such situation are too glaring and violent to be entertained for a moment under our constitutional framework.

There is no gainsaying the proposition that to allow the violation of a sentence of *destierro* without punishment is undesirable, but even without applying Article 157 of the Revised Penal Code, the act of the appellant cannot remain unpunished, because his violation of the sentence of *destierro* may be punished as contempt of court, for which imprisonment up to six months is provided.

It is deplorable that article 157 should not provide for a situation presented in this case, but the gap cannot be filled by this Court without encroaching upon the legislative powers of Congress.

Perhaps it is better that evasions of sentence be varished, as provided by the old Penal Code, by an increase in the evaded penalty. This will be more reasonable than the penalties provided by article 157, which appear to be disproportionate and arbitrary, because they place or

equal footing the evader of a sentence of one day of imprisonment and a life-terminer, one who commits an insignificant offense and one who perpetrates the most heinous crime. At any rate, this is a problem for Congress to solve.

The appealed decision should be set aside.

BRIONES, J.:

I concur in the foregoing dissenting opinion, because evidently the word "fugandose" in the Spanish text refers to imprisonment, not to *destierro*.

Judgment affirmed.

RESOLUTION OF THE SUPREME COURT

SUPREME COURT
MANILA

EXCERPT FROM THE MINUTES OF MARCH 3, 1950

* * * * *

"Rule 130 of the Rules of Court is hereby amended by adding thereto the following:

"SEC. 16. *Government exempt.*—The Government of the Philippines is exempt from paying the legal fees provided in this Rule."

* * * * *

DECISION OF THE ELECTORAL TRIBUNAL OF THE HOUSE OF REPRESENTATIVES

[Electoral Case No. 9. February 15, 1949]

ELISA R. OCHOA, protestant, vs. MARCOS M. CALO, protestee

ELECTIONS; PROTEST; APPRECIATION OF BALLOTS; RESULT OF REVISION.—It appears that out of the ballots submitted for the revision of this Tribunal, O is found to have obtained 1,212 votes and C 746. Summing up with the total previously found we arrived at the following conclusions: Ballots not involved in the protest as well as those admitted in the revision and against which objections were waived by the parties: E. R. O., 7,786, M. M. C., 8,618. We must add what has been found in the revision of the ballots to be valid and arrive at the following results: E. R. O., 8,999, M. M. C., 9,362 or a difference of 363 in favor of C.

ORIGINAL CASE of the Electoral Tribunal for the House of Representatives.

The facts are stated in the opinion of the tribunal.

Jose V. Rosales for protestant.

The protestee in his own behalf.

ALBANO, M.:

As a result of the election held on April 23, 1946 for the position of Representative for the lone district of Agusan, the herein protestee Marcos M. Calo was declared elected by the provincial board of canvassers with 9,423 votes. The herein protestant, Elisa R. Ochoa, a duly registered candidate was credited with 9,020.

In due time this protest was filed in which protestant prays for the recounting of votes in the precincts mentioned in the motion for protest. The revision was forthwith ordered by the Tribunal which showed that 4,044 votes for protestant were admitted, while 3,996 votes for protestee were also admitted. In the said revision 1,524 votes of Ochoa were objected to, or a total of 5,568 votes for Ochoa and 6,549 votes for Calo were involved in said revision; of these, 2,553 votes were objected to.

According to protestant, on page 4 of her memorandum, in the non-contested precincts Elisa R. Ochoa obtained 3,751 and Marcos M. Calo 3,073 votes. We must add to this the votes admitted as valid for both parties in the revision, to wit:

Elisa R. Ochoa	7,795
Marcos M. Calo	7,069

MUNICIPALITY OF BUENAVISTA

Precinct No. 1

C-1, rejected—name of Calo on line 3 for Senators.
C-2, rejected—name of Calo on line 13 for Senators, inverted.
C-3, admitted—name of Vicente Alage on line 2 for Senators, stray vote, and does not invalidate the ballot.
C-4, admitted—name of Vicente on line 1 for Senators is not an identifying mark.
C-8, admitted—name of “Garcia” on line 6 for Senators was written by the same hand with the rest, only there was change in pencil, which is hardly perceptible.
C-9, admitted—not written by two hands.
C-10, admitted—not written by two hands.
C-11, admitted—not written by two hands.
C-12, admitted—not written by two hands.
C-13, admitted—not marked.
C-16, admitted—not marked, although traces are due to heavy penmanship.
C-21, admitted—periods appearing thereon are not marks.
C-22 and C-23, valid—periods thereon are not marks.
O-1, rejected—name of Ochoa is on line for Senators.
O-2, admitted—the repetition of the names of Osmena, Marticez and Ochoa is due to the ignorance of the elector.
O-3, admitted—same reason as O-2.
O-4, admitted—not written by two hands.
O-5, admitted—not written by two hands.
O-6, admitted—not written by two hands.
O-7, admitted—written by the same hand.
O-8, admitted—not marked.
O-9, admitted—periods are not marks.

Precinct No. 2

C-1, rejected—M. Calo voted for Vice-President.
C-2, rejected—Marcos Calo voted for Vice-President.
C-3, rejected—Marcos Calo voted for Vice President.
C-4, rejected—Calo voted for Vice-President.
C-5, rejected—M. Calo voted for Vice-President.
C-6, rejected—Calo voted as Senator on line No. 3.
C-7, rejected—space for Representative in blank, although “M. M. Calo” appears on line 13 for Senators, reversed.
C-8, rejected—M. Calo appears on line 3 for Senators.
C-9, rejected—Marcos Calo appears on line one for Senators.
C-10, admitted—periods are not marks.
C-11, admitted—periods are not marks.
C-23, valid—the fact that only the surnames of Senatorial

candidates are written does not make marked ballot.

C-24, admitted—same as C-23.

C-25, admitted not marked.

C-26, admitted—the fact that “cuenco” and “clarin” begin with small letters, does not make the ballot marked.

O-1, rejected—E. Ochoa voted for Vice-President.

O-2, rejected—“Rocha” voted for Vice-President.

O-3, rejected—Ochoa voted for Vice-President.

O-4, rejected—Ochoa voted for Vice-President.

O-5, rejected—“E. Ochoa” appears on line 3 for Senators.

O-6, rejected—E. Ochoa voted on line 2 for Senators.

O-7, rejected—Ochoa voted on line 3 for Senators.

O-8, admitted—not marked. On line 3 for Senators, evidently the elector made mistake, and connected it.

O-9, admitted—“Cato” on line for Vice-President is stray vote.

O-10, admitted—“Lara” on line 10 for Senators evidently is intended for Lava.

O-11, admitted—the alleged defect is due to poor penmanship.

O-12, admitted—the elector evidently started to write “OHO”, but realizing his mistake, corrected it.

O-13 and O-14, admitted—were written by different hands.

O-15, admitted—although the name “Elisa Ochoa” was written below the line for Representative, it is opposite the word, “Representative”, just as “Eulogio Rodriguez” was written opposite the word Vice-President.

O-16, admitted—not marked. The erasures are corrections.

O-17, admitted—the name “Santiago” on line 11 for Senators is not mark; it refers to Santiago Fonacier, candidate for Senator.

O-18, admitted—not by two hands.

O-19, admitted—not marked.

O-20, admitted—not marked.

O-21, admitted—not marked.

O-22, admitted—the name “Ochao”—idem sonans of Ochoa.

O-23, valid—the name voted for is “Ochua”.

O-24, valid—the name voted for is “Ochoia”, idem sonans of Ochoa.

Precinct No. 3

C-1, rejected—Calo voted for Vice-President.

C-2, rejected—M. Calo voted for Vice-President.

C-3, rejected—Marcos Calo voted for Vice-President.

C-4, rejected—M. Calo voted on line 3 for Senators.

C-5, rejected—“Manuel Calo” voted on line 2 for Senators.

C-6, rejected—Calo voted on line one for Senators.

C-11 and C-12, admitted—not by the same hand. In C-11, Manuel Roxas and Elpidio Quirino are voted; and C-12, Sergio Osmena and Elpidio Quirino are voted. C-11, evidently prepared by a Liberal voter; and C-12, by Nacionalista voter.

C-13, admitted—not by two hands.

C-14, admitted—not by two hands.

C-16, admitted—not marked.

C-17, admitted—period is not mark.

C-18, admitted—not marked.

C-19, admitted—not marked.

C-20, admitted—not marked.

C-22, admitted—not marked.

O-1, rejected—Ochoa voted for Vice-President.

O-2, admitted—not marked.

O-3, admitted—alleged mark therein is accidental.

O-4, admitted—alleged mark is accidental.

O-5, admitted—the repetition of the name “Santiago Fonacier” for Senator is mistake.

O-6, admitted—the fast that “goles” and “marin” begin with small letters, does not make the ballot marked.

O-7, admitted—the fact that the name is printed does not make the ballot marked.

O-8, admitted—the blank spaces on the lines for Senators does not make the ballot marked.

O-9, admitted—ballot prepared by the same hand.

O-10, admitted—the fact that the name “javier” begins with small letter, does not make the ballot marked.

O-11, admitted—the name “Delaesos” is stray vote.

O-12, admitted—the mark is accidental.

O-13, admitted—the name “Robricus” in the space for Vice-President is intended for Rodriguez.

O-14, admitted—“Ochoo” in the space for Representative, is idem sonans for Ochoa—it is not mark.

O-16, admitted—the mark is accidental.

O-17, admitted—the person voted for Representative is “Ochua”.

Precinct No. 4

C-1, rejected—Marcos Calo voted for President.

C-2, rejected—M. Calo voted for Vice-President.

C-3, rejected—M. Calo voted for Vice-President.

C-4, rejected—Calo voted for Vice-President.

C-5, rejected—Calo voted on line 3 for Senators.

C-6, rejected—Calo voted on line one for Senators.

C-7, rejected—M. M. Calo appears on line 13 for senators, reversed.

C-8, rejected—M. M. Calo voted on line 3 for Senators.

C-9, rejected—M. Calo voted on line 2 for Senators.

C-10, rejected—M. Calo voted on line 2 for Senators.

C-11, rejected—M. Calo voted on line 3 for Senators.

C-12, rejected—M. Calo voted on line 3 for Senators.

C-13, rejected—Calo appears on line 13 for Senators, reversed.

C-14, rejected—Calo appears on line 3 for Senators.

C-15, rejected—completely illegible, although “Calo” appears on line one for Senators.

C-16, admitted—the fact that Mariano Cuenco is written in heavier hand does not make the ballot marked.

C-17, admitted—the names written from lines 12 to 16 for Senators were written with certain pencil.

C-18, rejected—the name “Hitler” voted for Senator is evidently an identifying mark.

C-19, admitted—the words marked on lines for Senators do not make the ballot marked.

C-24, admitted—the vertical line after the letter “M” in the name M. Calo, is accidental.

C-37, admitted—the periods do not make the ballot marked.

O-1, rejected—Ochoa voted for Vice-President.

O-2, rejected—E. R. Ochoa voted on line 3 for Senators.

O-3, rejected—Ochoa voted on line 3 for Senators.

O-4, rejected—Ochoa voted on line 2 for Senators.

O-5, admitted—not marked. The crossed out letters were due to correction made by the voter.

O-6, admitted—“Confines” and “Remeto” are stray votes.

O-7, admitted—written by the same hand.

O-8, admitted—same as O-7.

O-9, admitted—the prefix “Hon.” on lines one to four for Senators do not make the ballot marked.

O-10, admitted—period does not make the ballot marked.

O-11, admitted—the periods are not marks.

O-12, admitted—the spaces in the lines for Senators were left by the voter.

O-13, admitted—the names of Garcia and Clarin are not marks.

O-14, admitted—the name voted is “E. Otchwa”, which is idem sonans with Ochoa.

O-15, admitted—although poorly written, the name voted for is Ochoa.

O-16, admitted—“Ochoa” the family name voted, is idem sonans with Ochoa.

O-18, O-19, O-20, O-21, O-22, and O-23, admitted—the fact that they are written in mechanical letters does not make the ballot marked.

O-17, admitted—the person voted is “Ochsia”, idem sonans with Ochoa.

Precinct No. 5

C-1, rejected—Calo voted for President.

C-2, rejected—“C. N O Marcus” voted for Vice-President.

C-3, rejected—Calo voted for Vice-President.

C-4, rejected—Mr. Calo voted for Senator, line one.

C-5, rejected—Calo voted for Senator, line one.

C-6, rejected—Calo voted for Senator, line 6.

C-7, rejected—M. Calo voted on line 3 for Senators.
C-8, rejected—M. Calo voted for Senator, line 2.
C-9, rejected—Calo voted for Senator, line 2.
C-10, rejected—M. Calo voted for Senator, line 3.
C-11, rejected—M. Calo voted for Senators, line 3.
C-12, admitted—the prefix “Hon.” is not mark.
C-13, admitted—periods are not marks.
C-23, admitted—the fact that the name “Roxas” was lightly written, does not make the ballot marked.
C-24, admitted—written by the same hand.
C-25, C-26, C-27, and C-28, admitted—not marked.
C-31, admitted—names written on line 6 for Senators are not marks.
C-32, admitted—“Dominador San” on line _____ for Senators, is stray vote.
C-33, admitted—the fact that the name “Garcia” is not preceded by initial, while the other names are preceded with initials, does not make the ballot marked.
O-1, rejected—“Felisa Olsona” voted on line 3 for Senators.
O-2, rejected—Ochoa voted on line 2 for Senators.
O-3, rejected—Ochoa voted on line 3 for Senators.
O-4, rejected—Ochoa voted for Vice-President.
O-5, rejected—E. Ochon voted for Vice-President.
O-6, admitted—“Fontines” and Fornier are stray votes.
O-7, admitted—evidently the name “Ahaves” was intended for Altavas, a candidate for Senator.
O-8, admitted—the repetition of the name “Sanidad” is not mark.
O-9, admitted—the name “C. Garuya” was intended for C. Garcia, a candidate for Senator.
O-10, admitted—not written by two persons.
O-11, admitted—thumb-mark is accidental.
O-12, admitted—while Ochoa was voted for Representative, “Calo” was voted for Vice-President—vote for Calo is stray vote.
O-13, admitted—the fact that the letters “oa” were written with heavier hand, does not make the ballot marked.
O-14, admitted—the repetition was due to correction made by the voter.
O-15, admitted—the person voted for is Okchua, idem sonans of Ochoa.
O-16, admitted—the blank spaces do not make the ballot marked.
O-17 and O-18, admitted—the mechanical lettering does not make the ballot marked.
O-19, admitted the fact that the name “Ocho” was written below the line, does not make the ballot marked.
O-20, admitted—the name voted for is “Elisa”, and it is the given name of the protestant.
O-21, admitted—“Marcoa Garcia” is not identifying mark.

Precinct No. 6

C-1, rejected—Calo was voted for Vice-President.

C-2, rejected—Calo was voted for Vice-President.

C-3, rejected—M. Calo voted for Vice-President.

C-4, rejected—Calo M. voted for Vice-President.

C-5, rejected—Marcos Calo voted for Senator, line one.

C-6, rejected—Marcos Calo voted for Senator, line one.

C-7, rejected—Calo voted for Senator, line 2.

C-8, rejected—M. M. Calo voted for Senator, line 3.

C-9, rejected—M. Calo voted for Senator, line 3.

C-10, rejected—M. Clarin voted for Representative, and “Marcos Calo” written opposite the word “Senators”.

C-11, rejected—Calo voted for Senator, line 6.

C-12, rejected—M. Calo voted for Senator, line 13, reversed.

C-13, rejected—M. Calo voted for Senator, line 3.

C-14, rejected—“Calo” on line for Representative was rubbed out and voted for Senator, line 3.

C-15, admitted—although not clearly written, the name appears to be “M. M. Calo”.

C-16, admitted—although not clearly written, the person voted for is “Cllo”.

C-17, admitted—not written by two hands.

C-31 and C-32, admitted—periods are not marks.

O-1, rejected—Ochoa voted for Vice-President.

O-2, rejected—Ochua voted for Vice-President.

O-3, rejected—“E. Otsua” voted for Vice-President.

O-4, rejected—Ochoa voted for Vice-President.

O-5, rejected—Ochoa voted for Senator, line 13.

O-6, rejected—Ochoa voted for Senator, line 13, reversed.

O-7, rejected—Ochoa voted for Senator, line 3.

O-8, rejected—Ochoa voted for Senator, line 2.

O-9, admitted—the fact that it was written “All senators in this blank” across the face of this ballot, does not affect the validity of the votes in this ballot.

O-10, admitted—the alleged mark is the beginning of a letter, which the voter desisted to continue.

O-11, admitted—“Confesor” was evidently intended for Confesor; and “Bissho” was evidently for Dickno; and “Wara”, for Vera.

O-12, admitted—the person voted for Vice-President is evidently Rodriguez.

O-13, admitted—Periods are not marks.

O-14, admitted—“Martinitines” is evidently intended for Martinez; and Madag, for Mabanag.

O-15, admitted—the name written on line one for Senators is “Garcia.”

O-16, admitted—the name written is clearly “OCchoa”, idem sonans of Ochoa.

O-17, admitted—“Schoa” is idem sonans of Ochoa.

O-18, admitted—the person voted for is “Cchos”, idem sonans of Ochoa.

Precinct No. 7

C-1, rejected—Calo voted for Vice-President.
C-2, rejected—Calo voted for Senator, line 3.
C-3, admitted—the period is not mark.
C-4, admitted—the period is not mark.
C-5, admitted—the period is not mark.
C-10, rejected—the person voted for is “Carlos Calo”, a name distinct from that of the protestee.
C-11, admitted—not written by two hands.
C-12, admitted—not written by two hands.
C-13, admitted—not written by two hands.
C-15, admitted—although not clearly written, the word appearing therein is “Calu”, idem sonans of Calo.
C-16, rejected—the name appearing therein is “Manuel Calo,” a name distinct from that of the protestee.
O-1, rejected—Ochoa voted for Senator, line one.
O-2, rejected—Ochoa voted for Senator, line 3.
O-3, rejected—Ochoa voted for Senator, line 3.
O-4, rejected—Ochoa voted for Vice-President.
O-5, rejected—Ochoa voted for Senator, line 3.
O-6, rejected—“Otchoa” voted for Vice-President.
O-7, rejected—“Elsa Olha,” voted for Vice-President.
O-8, admitted—the word “Allavas” appearing therein is evidently intended for Altavas, a candidate for Senator.
O-9, admitted—the blank spaces are not marks.
O-10, admitted—the fact that the letter “H” is capital, is due to poor penmanship.
O-11, admitted—the circle is not mark.
O-12, admitted—“Garcino Gan” appearing on line one for Senator, is evidently intended for Carlos Garcia.
O-13, admitted—although not clearly written, the word “Ochuoa” is sufficiently clear.
O-14, admitted—the words written are “E. Osihoa,” idem sonans of Ochoa.
O-15, admitted—the name written is “Ocsoa”, idem sonans of Ochoa.

Precinct No. 8

C-1, rejected—“Calo Marcos” voted for President.
C-2, rejected—M. M. Calo voted for Vice-President.
C-3, rejected—Calo voted for Vice-President.
C-4, rejected—M. Calo voted for Vice-President.
C-5, rejected—Kalo voted for Vice-President.
C-6, rejected—Marcos Calo voted for Vice-President.
C-7, rejected—Calo voted for Senator, line one.
C-8, rejected—Marcos Calo voted for Senator, line 3.
C-9, rejected—M. M. Calo voted for Senator, line 3.
C-10, rejected—Marcos Calo voted for Senator, line 3.
C-11, rejected—M. Calo voted for Vice-President.

C-12, admitted—not written by two hands.
C-13, admitted—not written by two hands.
C-14, admitted—not written by two hands.
C-15, admitted—not written by two hands.
C-16, admitted—voter evidently started to write a name
on the space for Vice-President, but desisted from
continuing it.
C-21, admitted—the line is to indicate that the voter does
not want to vote for Senators.
C-22, admitted—mark is accidental.
C-23, admitted—same reason as above.
C-24, admitted—same reason as above.
C-25, admitted—same reason as above.
C-26, admitted—mark is accidental.
C-27, rejected—the person voted for is “Manuel Calo” a
name distinct from that of the protestee.
O-1, rejected—“Elisa Ochoa” voted for Vice-President.
O-2, admitted—the word “Senators” on line one is to
signify that the voter wanted to vote for Senators.
O-3, admitted—periods are not marks.
O-4, admitted—not written by two hands.
O-5, admitted—not written by two hands.
O-6, admitted—“Rosales” is stray vote.
O-7, admitted—“Sinsong” voted for Vice-President, is
stray vote.
O-8, admitted—Moncado, voted as Vice-President, is stray
vote.
O-9, admitted—not well written; but the name written is
“E. Ochoa”.
O-10, admitted—the one voted for is “Oshea”, idem sonans
of Ochoa.
O-11, admitted—the person voted for is “E. Oatchoa”,
idem sonans of Ochoa.

Precinct No. 9

C-1, rejected—Marcos Calo voted for Vice-President.
C-2, rejected—M. Calo voted for Vice-President.
C-3, rejected—Marcos Calo voted for Senator, line 2.
C-4, rejected—M. Calo voted for Senator, line 3.
C-5, rejected—M. Calo voted for Senator, line 2.
C-7, admitted—“Canberiora” is surplusage word.
C-10, admitted—the name on line 5 for Senators, is stray
vote.
C-11, admitted—the fact that the last two letters “oa” in
the protestant’s surname are written in heavy lines
does not make the ballot marked.
C-12, admitted—the lack of period after the initial “E”
in “E Quirino”, does not make the ballot marked.
C-13, admitted—the fact that the names of the persons
voted for are written in ink and that the initial “E”
in “E Quirino” is not punctuated, do not make the
ballot marked.

C-14, admitted—the fact that there are spaces in the lines for Senators does not make the ballot marked.

C-15, admitted—the period is not mark.

C-20, admitted—the name “E. Ochoa” voted for Senator, is stray vote.

C-21, admitted—the fact the lines for Senators were left in blank does not make the ballot marked.

C-22, admitted—not written by two hands.

C-23, admitted—Elisa R. Ochoa voted for Senator, line 2, is stray vote.

C-24, admitted—the alleged flourishes are corrections made by voter.

O-1, rejected—E. Ochoa voted for President.

O-2, rejected—E. Oshoa voted for Vice-President.

O-3, rejected—Ochoa voted for Vice-President.

O-4, rejected—Ochoa voted for Senator, line 3.

O-5, rejected—Ochoa voted for Senator, line 2.

O-6, rejected—Ochoa voted for Senator, line 3.

O-7, rejected—“Otsua” voted for Senator, line one.

O-8, rejected—“EOchoa” voted for Senator, line 3.

O-9, rejected—“E. Otsaua” voted for Senator, line 13, reversed.

O-10, rejected—Elisa R. O. voted for Senator, line 4.

O-11, rejected—Ochoa voted for Senator, line 3.

O-12, rejected—“E. R. Esoa” voted for Senator, line 3.

O-13, rejected—“Elisa O.” voted for Senator, line 3.

O-14, admitted—not written by two hands.

O-15, admitted—period is not mark.

O-16, admitted—the name written is “Ochoh”, idem sonans of Ochoa.

O-17, admitted—the second “o” is to correct the first.

O-18, admitted—“Entong ehado” is stray vote.

O-19, admitted—“Martin Daya” and “Pedo Ello” are stray votes.

O-20, admitted—the person voted for is “Ochoa” although not clearly written.

O-21, admitted—the person voted for is “E. C. Okhoa” idem sonans of Ochoa.

O-22, admitted—the person voted for is “E. Octhoa”, idem sonans of Ochoa.

Precinct No. 10

C-1, rejected—Marcos Calo voted for Vice-President.

C-2, rejected—M. Calo voted for Senator, line one.

C-3, rejected—M. Calo voted for Senator, line 3.

C-4, rejected—M. Calo voted for Senator, line 3.

C-5, admitted—the person voted for is “Celo”, sufficiently close to Calo.

C-6, admitted—the person voted for is M. M. Celo, sufficiently close to Calo.

C-7, admitted—not written by two hands.

C-8, admitted—not written by two hands.

C-9, admitted—not written by two hands.
C-11, admitted—stains are accidental.
O-1, rejected—Ochoa voted for Vice-President.
O-2, rejected—Ochoa voted for Vice-President.
O-3, rejected—Ochoa voted for Senator, line 3.
O-4, rejected—Rodriguez voted for Representative, and Ochoa, for Senator.
O-5, admitted—not written by two hands. “Maltavas” and “Mallas” are stray votes.
O-6, admitted—the fact that “Tomas” was written mechanically, does not make the ballot marked.
O-7, admitted—“Mabang” written on line 3 for Senators, evidently is intended for Mabanag.
O-8, admitted—“Mabang” written on line 3 for Senators, evidently is intended for Mabanag.
O-9, admitted—“Mabang” written on line 9 for Senators, evidently is intended for Mabanag.
O-10, admitted—“Caksawa” is idem sonans of Ochoa.
O-11, admitted—the fact that “Cibili” was written opposite the word “Senators”, does not make the ballot marked.
O-12, admitted—same as O-11.
O-13, admitted—the repetition of Osmeña on line for President, does not make the ballot marked.
O-14, admitted—not written by two hands. And the fact that Martinez, Mabanag and Garcia were written opposite the word “Senators” does not make the ballot marked.
O-15, admitted—period is not mark.
O-16, admitted—the voter desired to correct his vote.
O-17, admitted—not written by two hands.
O-18, admitted—the person voted is “Ilisa Otsoa”, idem sonans of Ochoa.

Precinct No. 11

C-1, rejected—“Calu” voted for President.
C-2, rejected—Marcos Calo voted for President.
C-3, rejected—Calo voted for Vice-President.
C-4, rejected—Calo voted for Vice-President.
C-5, rejected—Calo voted for Vice-President.
C-6, rejected—Calo voted for Vice-President.
C-7, rejected—Marcos Calo voted for Senator, line 2.
C-8, rejected—Calo voted for Senator, line 3.
C-9, rejected—Calo voted for Senator, line 2.
C-10, rejected—Carlos Garcia voted for Representative, and Marcos Calo in the space for Senator.
C-11, rejected—M. Calo voted for Senator, line 3.
C-12, rejected—N. Calo voted for Senator, line 2.
C-13, admitted—voted for persons not candidates, is stray vote.
C-19, admitted—period does not identify the ballot.
C-21, admitted—“v. Tanoy” is stray vote.

C-23, admitted—"Balas" is stray vote.
C-25, admitted—the alleged mark was the start of a letter which the voter did not continue.
C-27, admitted—not written by two hands.
O-1, rejected—Ochoa voted for Vice-President.
O-2, rejected—E. Ochoa voted for Vice-President.
O-3, rejected—Ochoa voted for Vice-President.
O-4, rejected—Ochoa voted for Vice-President.
O-5, rejected—"Ohao" voted for Senator, line 3.
O-6, rejected—E. Ochoa voted for Senator, line 1.
O-7, admitted—the name written on line 4 for the Senators is "Azanso", referring probably to candidate Pascual B. Azansa.
O-8, admitted—written by the same hand.
O-9, admitted—the alleged traces are due to the ignorance of the voter.
O-10, admitted—written by the same hand.
O-11, admitted—blank spaces do not make the ballot marked.
O-12, admitted—the person voted for is "I. Osoba", sufficiently close to Ochoa.
O-13, admitted—the name written thereon is "Ochaa".

MUNICIPALITY OF BUTUAN

Precinct No. 1

C-1, in the space for Representative, letters "M.C." are written. In accordance with Rule 15, Section 144, of Commonwealth Act No. 357, the vote is invalid.
C-3, admitted—period is not mark.
C-4, admitted—same reason as above.
C-5, admitted—same reason as above.
C-7, admitted the alleged mark is the letter "z", which is the last letter of the surname "Rodriguez".
C-10, admitted—not written by two hands.
C-11, admitted—not written by two hands.
C-12, admitted—not written by two hands.
C-13, admitted—not written by two hands.
C-26, admitted—the person voted for is M.A. Calo.
C-37, admitted—period is not mark.
O-1, rejected—Ochoa voted for Vice-President.
O-2, rejected—Ochoa voted for Senator, line one.
O-3, rejected—"Elesa R. Ochoa" voted for Senator, line 6.
O-4, rejected—Ochoa voted for Senator, line 3.
O-5, rejected—Ochoa voted for Senator, line 3.
O-6, admitted—the name of Ochoa opposite the word "Vice-President" was mistaken, and was corrected by writing her name in the proper place.
O-7, admitted, although illegible. The fact that the name written begins with "O", followed by "c," "a," "oho," is sufficiently clear, and shows the intention of the voter to vote for Ochoa.

O-8, admitted—the name “Melecio Araganas” is evidently intended for “Melecio Arranz.”

O-9, admitted—“E. Garcia” on line for Vice-President, is stray vote.

O-10, admitted—the fact that the name “elisa” begins with small letter, does not make the ballot marked.

O-11, admitted—not written by two hands.

O-12, admitted—lines are flourishes habitual to the writer.

O-13, admitted—the fact that “Garcia” appears opposite the word “Senators” does not make the ballot marked.

O-14, admitted—same reason as O-13.

O-15, admitted—same reason as O-13 and O-14.

O-16, admitted—the voter desisted from voting, except for President and Representative.

O-17, admitted—same reason as O-16.

Precinct No. 2

C-1, rejected—M. Calo voted for Senator, line 2.

C-9, admitted—alleged thumb-mark is accidental.

C-10, admitted—same reason as C-9.

C-14, admitted—the fact that “Angeles” was written with heavier line does not make the ballot marked.

C-17, admitted—the name “Ochoa” on line 16 for Senators, is stray vote.

C-19, admitted—the fact that each senatorial candidates were voted with full names and others with initials, does not make the ballot marked.

C-20, admitted—the fact that some senatorial candidates were voted with full names and others with initials, does not make the ballot marked.

C-21, admitted—for the same reason as C-20.

O-1, rejected—“Elisa R. Ochoa” voted for Vice President.

O-2, rejected—Ochoa voted for Senator, line 3.

O-3, rejected—Ochoa voted for Senator, line one.

O-4, admitted—the first three names were started and then erased, but not completely erased.

O-5, admitted—under Rule 5, section 144, of Commonwealth Act No. 357, the word “Datu” is not mark.

O-6, admitted—the fact that “Garcia” was written opposite the word “Representative” does not make the ballot marked.

O-7, O-8, and O-9, admitted—alleged marks are accidental.

O-10, admitted—the person voted for apparently is “Ocpoa”, although the letter “p” may be letter “h” with vertical line drawn below the line for Representative.

Precinct No. 3

C-1, rejected—“m. Colo” voted for Vice-President.

C-2, rejected—M. Calo voted for Senator, line 2.

C-3, rejected—Calo voted for Senator, line 2.
C-4, rejected—M. Calo voted for Senator, line 3.
C-7, admitted—stain is accidental.
C-17, admitted—not by two hands.
C-18, admitted—not by two hands.
C-19, admitted—not by two hands.
C-21, admitted—not by two hands.
C-22, admitted—not by two hands.
C-23, admitted—not by two hands.
C-24, admitted—not by two hands.
O-1, rejected—Elisa R. Ochoa voted for Senator, line one.
O-2, rejected—Ochoa voted for Senator, line 2.
O-3, rejected—Elisa Ochoa voted for Senator, line 3.
O-4, rejected—Elisa Ochoa voted for Senator, line 3.
O-5, rejected—“Eotsoa” appears on line 13 for Senators, reversed.
O-6, rejected—Ochoa voted for Senator, line 3.
O-7, admitted—although the name “Cahao” appears on line 3 for Senators, yet it is preceded by the word “Representative.”
O-8, admitted—the elector is evidently ignorant, and whatever he started to write on line 4 for Senators, must be a name which he did not continue.
O-9, rejected—cannot be determined for whom the voter voted.
O-10, admitted—the elector was evidently mistaken and he made the necessary correction by writing “Rodriguez” for Vice-President, and Ochoa for Representative.
O-11, admitted—the word “Senator” on line one for Senators does not make the ballot marked.
O-12, admitted—under Rule 10, section 144, of Commonwealth Act No. 357.
O-13, admitted—this was prepared apparently by an ignorant voter, and whatever he wrote on line one for Senators is a surplusage.
O-14, admitted—the fact that “Garcia” appears opposite the word “Representative” does not make the ballot marked.
O-15, admitted—same reason as O-14.
O-16, admitted—the name “Allavas” apparently is intended for Altavas, a candidate for Senator.
O-17, admitted—the word “Vepa” on line 7 for Senators, apparently is for Vera, a candidate for Senator.
O-18, admitted—the name “Laoa” on line 4 for Senators is for Lava.
O-19, admitted—the objection indicated by the protestee does not appear on the ballot.
O-20, admitted—the fact that “E. R. Ochoa” was written in print and the rest not, does not make the ballot marked.

O-21, admitted—the name “Sator O. Clarin” probably means Senator O. Clarin.

O-22, O-23, O-24, and O-25, admitted—the fact that the voters desisted from voting for other positions, does not make the ballots invalid.

O-26, admitted—the objection indicated by the protestee does not appear on the ballot.

O-27 to O-38, were reserved for objection by the protestee on the trial. As no objections were presented and the ballots are free from defects, therefore they should be counted as votes for the protestant Ochoa.

Precinct No. 4

C-1, rejected—Marcos Calo voted for Vice-President.

C-2, rejected—M. Calo voted for Senator, line 3.

C-3, rejected—M. Calo voted for Senator, line 3.

C-4, rejected—M. Calo voted for Senator, line 3.

C-5, rejected—M. Calo voted for Senator, line 2.

C-6, rejected—M. Calo voted for Senator, line 2.

C-7, rejected—Calo written on line 16 for Senators, reversed.

C-9, admitted—the voter is evidently ignorant and merely repeated on the lines for Senators the persons voted by him for President, Vice-President and Representative.

C-10, rejected—Marcos Calo voted for Vice-President.

C-11, admitted—no stain appears on the back of the ballot.

C-12, admitted—stain is apparently accidental.

C-24, admitted—not by two hands.

C-25, admitted—not by two hands.

C-26, admitted—not by two hands.

C-27, admitted under Rule 10, sec. 144, Commonwealth Act No. 357.

C-30, admitted—the name “Cuenco” is written with the same pencil as the rest of the ballot.

C-36, admitted—the periods after the letter “M” and letter “S” are not in ink, but heavy lead pencil.

C-37, admitted—the period is not mark.

C-38, admitted—the period does not identify the ballot.

C-39, admitted—same as above.

O-1, rejected—“Filisa Orcsa” was voted for Vice-President.

O-2, rejected—the name written thereon apparently is “Carcas”.

O-3, rejected—“Ochua” is voted for Vice-President.

O-4, rejected—“Ilisa R. Ochoa” is voted for Senator, line one.

O-5, admitted—the erasure is not complete—the name written is “Ochoa”.

O-6, rejected—Elisa R. Ochoa is voted for Senator, line 3.

O-7, rejected—Ochoa is voted for Senator, line 3.
O-8, rejected—“E. Ochua” is voted for Senator, line 3.
O-9, admitted—although poorly written, it can be seen
“Occoa”, idem sonans of Ochoa.
O-10, rejected—totally illegible.
O-11 admitted—the word “Altavana” on line 16 for Sen-
ators, evidently refers to Altavas, a candidate
for Senator.
O-12, admitted—“E. Ochoa” voted for Representative, is
idem sonans with Ochoa.
O-13, admitted—the name “Martinez”, candidate for Sen-
ator, voted on line 16, does not identify the ballot.
O-14, admitted—for the same reason as O-13.
O-15, admitted—under rule 10, sec. 144, Act No. 357.
O-16, admitted—the erasure thereon was due to the de-
sire of the elector to correct his vote.
O-17, admitted—the word appearing on the first line for
Senators is “Diocno”, a candidate for Senator.
O-18, admitted—the mark is accidental.
O-19, admitted—the word written on line 8 for Senators
is “Mabanac”, apparently referring to senatorial
candidate Mabanag.
O-20, admitted—the word “Diongco” appearing on line 3
for senators apparently is for Diokno.
O-21, admitted—the word “Gamula” written on line one
for Senators, is stray vote.
O-22, admitted—the name “Babanag” on line 8 for Sen-
ators is evidently for Mabanag.
O-23, admitted—the crossing out of letters “M.G.” was
due to the desire of the voter to correct his vote.
O-24, admitted—the elector made a mistake in voting
Ochoa for President, so he crossed out her name
and put it in the proper place.
O-25, admitted—“Alavas” appearing on line 14 for Sen-
ators, apparently refers to Altavas.
O-26, admitted—“C. Garcia” appearing on line one for
Senators is not mark, because C. Garcia is a sena-
torial candidate.

Precint No. 5

C-1, rejected—Marcos Calo voted for Senator, line 3.
C-3, admitted—the name “Anduga” on lines 16 for Sen-
ators, is surplusage.
C-4, admitted—period is not mark.
C-5, admitted—same reason as C-4.
C-6, admitted—same reason as C-5.
C-7, admitted—same reason as C-6.
C-8, admitted—the name Cruz is written with the same
pencil as the rest.
O-1, rejected—Ochoa for Senator, line 3.
O-2, rejected—Ochoa voted for Senator, line 16, reversed.

O-3, admitted—"Mariano Garcia" appearing on line for President is stray vote, as well as "Carlos Garcia" appearing on line for Vice-President.

O-4, admitted—blank spaces in the lines for Senators do not identify the ballot.

O-5, admitted—not written by two hands.

O-6, admitted—the period before the names, seems to be characteristic of the writer.

O-7, admitted—the elector evidently started to write "V. Francisco", but erased later on.

O-8, admitted—the illegible words appearing on lines 2 and 4 Senators, are due to the ignorance of the voter.

O-9, admitted—what is alleged "E. Duerino" is in reality E. Quirino.

O-10, admitted—"Gargaya" appearing on line one for Senators, apparently is for Garcia.

O-11, admitted—"Allavas" appearing on line 12 for Senators, is Altavas.

O-12, admitted—"Allavas" appearing on line 13 for Senators, is Altavas.

O-13, admitted—"Allavas" appearing on line 14 for Senators, is Altavas.

O-14, admitted—"Arameta" appearing on line 6 for Senators, is Araneta.

O-15, admitted—the fact that "V. J. Francisco" was written on line 12 for Senators, and "R. Diokno" on line 13, does not make the ballot marked.

O-16, admitted—the fact that Pedro Singson Reyes was written in full on line 10 for Senators, does not make the ballot marked.

O-17 to O-20, admitted—the blank spaces on these ballots are not marks.

O-21 to O-34, admitted—for the same reason as O-17 to O-20.

O-35, admitted—what is written on line 2 for Senators, does not identify the ballot.

Precinct No. 6

C-1 to C-14, admitted—the alleged marks are accidental.

C-15 to C-17, admitted—the alleged stains are accidental.

C-20, admitted—the person voted for Representative is M. Calo.

C-22, admitted—periods do not identify the ballot.

C-23, admitted—periods do not identify the ballot.

C-33, admitted—the family name "Cruz" written on lines 6 and 7 for Senators is written with the same pencil as the rest.

O-1, rejected—"Lisa R. Ochoa" voted for Senator, line 3.

O-2, rejected—Ochoa voted for Senator, line 3.

O-3, rejected—Ochoa voted for Senator, line 3.

O-4, rejected—"Ochoa" is on line 13 for Senators, reversed.

O-5, admitted—"Ocha" voted for Representative.

O-6, admitted—although it is below the line for Representative, the name "Otsua" is written exactly opposite the word "Representative".

O-7, to O-10, admitted—the alleged marks are accidental.

O-11, rejected—completely illegible.

O-12, admitted—the person voted for is "Orsuua", sufficiently close to Ochoa.

O-13, admitted—the person voted for is "Ochosa", idem sonans with Ochoa.

O-14, admitted—the person voted for is E. R. Ohoa.

O-15, admitted—the person voted for, although not clearly legible, is "Ochoaca."

O-16, admitted—"Carlos Insua" on line 14 for Senators, is stray vote.

O-17, admitted—"Moncado" on line 13, and "Marcos Calo" on line 14 for Senators, are stray vote.

O-18, admitted—the word "Leve" on line 13 for Senators apparently refers to Lava.

O-19, admitted—the fact that the protestant's name is handprinted, does not make the ballot marked.

O-20, admitted—the voter, on line 16 for Senators, wrote "Jose Climaco", but realizing his mistake, he crossed out "Climaco", and wrote "Avelino".

O-21, admitted—"Aranela" on line 6 for Senators is Araneta.

Precinct No. 8

C-1, admitted—the person voted for is "Marcus Caro", idem sonans with Marcos Calo.

C-8, admitted—the prefix "Abogado" before the name M. M. Calo is not mark, according to Rule 5, sec. 144 of Commonwealth Act No. 357.

C-9, rejected—the person voted for is Manuel Calo.

C-20, admitted—the period after the name "Osmena" is not mark.

C-21, admitted—the period after "Roxas" does not make the ballot marked.

C-22, admitted—periods after the names voted for are not marks.

C-37, admitted—the name written there is clearly "Calo".

O-1, rejected—Ochoa voted for Senator, line 5.

O-2, rejected—"E. Ochea" voted for Senator, line 3.

O-3, rejected—Elisa R. Ochoa voted for Senator, line 3.

O-4, rejected—the name "Ochoa" appears on the reversed, side of the ballot and did not indicate the position for which she was voted.

O-5, admitted—the fact that "Oxmena" was written in free hand, and the rest is in print, does not make the ballot marked.

O-6, admitted—the person voted for is “Elisa O. Rosales.” Rosales is the middle name of the Protestant.

O-7, admitted—“Carlos M.” on the first line for Senators, is stray vote.

O-8, admitted—on line 4 for Senators, the voter started to write a name, which did not continue.

O-9, admitted—“Alohud” voted on the first line for Senators, is stray vote.

O-10, admitted—Paul Verzosa was a senatorial candidate.

O-11, admitted—on line 9 for Senators, the voter started to write a name, which did not continue.

O-12, admitted—the name written on line 6 for Senators, is stray vote.

O-13, admitted—the crossed out words on the line for Vice-President and first line for Senators were due to the desire of the voter to correct his vote.

C-14, admitted—“h. Moncado” on line 16 for Senators, is stray vote.

O-15 to O-18, admitted—the blank spaces on these ballots do not identify the same.

O-19, admitted—“Constancio P. Cecilio” on line 16 for Senators is stray vote.

O-20, admitted—the letters “E. R.” on line 8 for Senators are the beginning of a name, which the elector did not continue.

O-21, admitted—“Cabile” on line 3 for Senators do not identify the same, because this was intended for Cabili.

O-22, admitted—the crossed out letters “C.A.” on line 3 for Senators, is not mark.

O-23, admitted—the fact that this ballot was written in mechanical handwriting does not make the ballot marked. The ink stains apparently are accidental.

O-24 to O-25, admitted—blank spaces on the ballot do not make the ballots marked.

O-26, admitted—wide margin in the first space for Senators does not make the ballot marked.

O-27, admitted—“Ochoa” is clearly written over the word “Rodriguez”.

O-28, admitted—the person voted for is “Ocha”.

O-29, admitted—the person voted for is “Utsoua”.

O-30, admitted—the name here is clearly “Ochoa”.

O-31 to O-39—the protestee reserved his right to interpose objections on these ballots, but until now no objection were presented. Inasmuch as these ballots are free from defect, they must be considered valid voted for Ochoa.

Precinct No. 9

C-2, rejected—marked ballot—“Max,” “Maneng,” “Paining,” “Patty” and “Leaping Lone” were written on line 16 for Senators.

C-3, admitted—"Anday" is stray vote.

C-4, admitted—the words written opposite the word "Representante" are "M. Cato" idem sonans with M. Calo.

C-7, admitted—period after "Fonacier" does not make the ballot marked.

C-8, admitted—period after "De la Cruz" does not make the ballot marked.

C-9, admitted—period after "Confesor" does not make the ballot marked.

C-12, admitted—Marcos M. Calo is also known as "Cacoy Calo."

C-15, admitted—the fact that the names of five senatorial candidates are written in full and the rest with initials, does not make the ballot marked.

C-16, admitted—the fact that six senatorial candidates have their initials and the rest not, does not make the ballot marked.

C-19, admitted—under Rule 10, sec. 144, of Commonwealth Act No. 357.

O-1, rejected—Ochoa voted for Vice-President.

O-2, rejected—the person voted for Representative is "Butuana."

O-3, rejected—"Elesa Ochoa" voted for Senator, line 3.

O-4, rejected—"Elisa Ochoa" voted for Senator, line 3.

O-5, admitted—the voter started to write "M. Calo", but erased, and later on wrote "E. Ochoa."

O-6, admitted—the names "Avantes" and "Martinez" voted for Senators, do not identify the ballot.

O-7, admitted—"Allavas" on line 6 for Senators, and "Arancia" on line 15, evidently refer to Altavas and Arranz.

O-8, admitted—"Mapanag" on line 5 for Senators is Mabanag.

O-9, admitted—"Allavas" on line 14 for Senators, is Altavas.

O-10, admitted—"Magalono" on line 13 for Senators is Magalona.

O-11, admitted—"Deumo" on line 11 for Senators, is Diokno.

O-12, admitted—"Diokmo" on line 2 for Senators, and "Conailer" on line 8, refer to Diokno and Fonacier.

O-13, admitted—"P. Omero" on line 2 for Senators is Romero.

O-14, admitted—"Diokno" on line 3 for Senators is for Diokno.

O-15, admitted—"Dioqno" on line 10 for Senators is for Diokno.

O-16, admitted—"Labanag" on line 3 for Senators, and Insuan" on line 6, refer to Mabanag and Insua.

O-17, admitted—the person voted for Representative is "Ochuso," idem sonans with Ochoa.

O-18, admitted—the person voted for Representative is “Ochoo,” idem sonans with Ochoa.

O-19, admitted—the repetition of Osmeña for President does not make the ballot marked.

O-20 to O-22, admitted—crossing out the parts of words were due to the desire of the voter to correct his vote.

O-23, admitted—“C. Carciya” on line one for Senators is for Garcia.

O-24, admitted—“Carcea” on line one for Senators is for Garcia.

O-25, admitted—“Sinson”, voted for Senator refers to Singson.

O-26, admitted—the fact that some senatorial candidates were voted with their initials and the rest not, does not make the ballot marked.

O-27, admitted—the alleged defect is due to poor penmanship.

O-28, admitted—the periods are not marks.

Precinct No. 10—Butuan

C-1, and C-2 rejected—Marcos Calo voted for in lines for Senators.

C-3, C-4, C-5 and C-6, valid—periods do not make them marked.

C-13, valid—the marks “J”, “G” and “L” do not make it a marked ballot.

C-32, valid—stains are accidental.

C-34 and C-35, valid—stains in the ballots are accidental.

C-37, valid—deep marks of the pencil do not make it a marked ballot.

C-48, valid—the difference in writing of “T. Confesor” in indelible pencil does not make it a marked ballot.

O-1, invalid—Ochoa is written in the line for Senator.

O-2, invalid—Ochoa is written in the line for Vice-President.

O-3, and O-4, invalid—Ochoa is written in lines for Senator.

O-5, O-6, O-7, O-8, O-9, O-10 and O-11, invalid—Ochoa written in lines for Senators. O-1 to O-11 are all invalid.

O-12, valid—“Marcos Plaza” is a stray vote.

O-13, valid—the repetition of the name does not make it a marked ballot.

O-14, valid—for the same reason.

O-15, valid—“Jvier” is for Javier. It does not make the ballot marked.

O-16, valid—“E. A” is stray ballot.

O-17, valid—the word “Pedru” is stray vote.

O-18, valid—the word “Garcia” there does not make it a marked ballot.

O-19, valid—“Alalavas” is for Altavas.

O-20, valid—Garcia's name in the second line for Senators does not make it a marked ballot.

O-21, valid—the word "Carin" is for Clarin, and Garra-ran" is for Garcia.

O-22, valid—the word "jabur" apparently stands for Ja-vier.

O-23, valid—"Gabili" stands for Cabili.

O-24, valid—the letter "R" before "Conpesor" does not make it invalid.

O-25, valid—thumb-mark is accidental.

O-26, valid—thumb-mark is accidental.

O-27, O-28 and O-29, valid—stains at the back are accidental.

O-30, O-31, O-32, O-33 and O-34, valid—the crossed out words do not make the ballots marked.

O-35, to O-42, valid—the words written for Representative clearly appear to be that of Eliza Ochoa.

O-43, and O-44, valid—the words "P. Sanidad" and "Ca-bili" were written opposite that for Senators do not make the ballots marked.

O-45, valid—stains are accidental.

Precinct No. 14—Butuan

C-1, invalid—Calo was voted for Vice-President.

C-22, valid—the name of Emilia del Rosario does not make it a stray ballot.

O-1, valid—it is a feeble attempt of the voter to make out the word "Ochoa."

O-2, valid—for the same reason.

O-3, valid—Garcia is voted as stray vote.

O-4 to O-6, valid—cross-out words do not make the ballots marked.

O-7, valid—"Allavas" stands for Altavas.

O-8, valid—"JusiRumio" objected word, is for Romero.

O-9, valid—the words "Sotto Silos" do not make it marked.

O-10, valid—the word "Garcia" does not make it marked.

Precinct No. 15—Butuan

C-1, valid—the writing of the name of Roxas in ink does not make it marked.

C-2, valid—written by the same hand.

C-4, valid—punctuation marks do not make the ballot marked.

C-17, valid—full name "Tomas Confessor" does not make the ballot marked.

O-1, invalid—Ochoa written for Senator.

O-2, invalid—Ochoa written for Vice-President.

O-3, invalid—Ochoa written for Senator.

O-4, valid—the difference in strokes for writing does not make the ballot marked, being apparently the ballot was written by the same hand.

O-5, valid—the same reason as above.
O-6, valid—the word “Dokno” stands for Diokno.
O-7, valid—for the same reason.
O-8, valid—for the same reason.
O-9, valid—for the same reason.
O-10, valid—for the same reason.
O-11, valid—for the same reason.
O-12, valid—for the same reason.
O-13, valid—the name of Ochoa is clearly written for Representative.
O-14, valid—idem sonans.
O-15, valid—C. P. Garcia is candidate for Senator.
O-16, valid—the word “Golez” for Senator is stray vote.
O-17, valid—“Alatavas” for Senator is valid.
O-18, valid—the name of Ochoa is clearly written on the specific line for Representative.
O-19, valid—“Abilleno” stands for Avelino.
O-20, valid—“c. Carza” stands for Garcia.
O-21, valid—the word “Andres Marao” is stray vote, there being no evidence that said person is a voter of this precinct.
O-22, valid—Clarin is written for Senator.
O-23, valid—crossed out words are accidental.
O-24, valid—erasure is accidental.
O-25, valid—erasures are accidental.
O-26, valid—same reason as above.
O-27, valid—same reason as above.
O-28, valid—same reason as above.
O-29, valid—erasures or flourishes do not make a ballot invalid.
O-30, valid—erasures do not make the ballot invalid.
O-31, valid—for the same reason.
O-32, valid—for the same reason.

Precinct No. 16—Butuan

C-1, valid—M. M. Calo written just below the line for Representative while E. Rodriguez is written for Representative. E. Rodriguez, being candidate for Vice-President and written just below the word “Vice-President”, “E. Rorigues” is considered as stray vote, “M. M. Calo” considered vote for Representative.
C-2, invalid—M. Calo voted for Vice-President.
C-3, invalid—Calo voted for Senator in the reversed order.
C-4, valid—although it appears that Calo is voted in the space for Senator and the space for Representative is blank, yet Calo’s name is preceded by the word “represent” which indicates the office to which he is voted for, just like the other votes for Roxas being preceded by the word “President”, Quirino

by the word "Vice", and Avelino by the word "Senador."

C-5, invalid—M. Calo is voted for Senator.

C-6, invalid—for the same reason.

C-7, invalid—for the same reason.

C-8, invalid—for the same reason.

C-11, rejected—the words "walay relief, walay voto para cang Ochoa, lagura" make the ballot marked. In the case of *Confesor vs. Lutero*, in which a similar ballot was questioned (L-8, Cabatuan, Precinct No. 8), the Court holds that its presence is impertinent. It is therefore marked.

C-12, invalid—the words "Ewa bonti patay na" and the name "J. Matio Jamana" which is in the 16th line for Senators falls under the same ruling as above.

C-13, valid—the words "Agaton Candol" is stray vote, there being no evidence to the fact that this person is a voter in this precinct.

C-14, valid—for the same reason.

C-16, invalid—for being marked. The words "Isabelo Malalaw" with the number "225" and then his signature is not merely accidental but intentional. There being for the presence of this number in the ballot is apparent that this ballot is marked.

C-17, C-18 and C-19—rejected—the word "ling" appearing on each of these ballots seems to be an identification mark and hence these ballots are rejected.

C-20, valid—the word "Nonong" is stray vote.

C-21, valid—the word "Dadag" is stray vote.

C-22,—the word "ticong" is stray vote. There being no evidence to the fact that these words correspond to voters in this precinct.

C-23, valid—the names referred to are stray votes

C-24, valid—the word "Malalag" stands for "Mabanag".

C-25, valid—for the same reason.

C-26, valid—for the same reason.

C-27, valid—for the same reason.

C-28, valid—for the same reason.

C-29, valid—for the same reason.

C-30, valid—for the same reason.

C-31, valid—for the same reason.

C-32, valid—for the same reason.

C-33, valid—for the same reason.

C-34, valid—for the same reason.

C-35, valid—for the same reason.

C-36, valid—for the same reason.

C-37, valid—the use of different pencils does not make it invalid.

C-38, valid—for the same reason.

C-39, valid—the use of period after the name of the candidate does not make it marked.

C-40, valid—for the same reason.
C-41, valid—for the same reason.
C-42, valid—for the same reason.
C-43, valid—the use of punctuation mark after the name of candidate does not make it marked.
C-65, invalid—the person voted for is “Mariano Calo”.
O-1, invalid—the candidate voted for is illegible.
O-2, valid—the word clearly appears to be that of Ochoa for Representative.
O-3, valid—the candidate voted for is “Eliza” in line for Representative.
O-4, valid—the candidate voted for Representative is Ochoa.
O-5, invalid—the word appearing in the line for Representative is “E. R. O.” Initials does not identify any candidate.
O-6, valid—the name “Ocho” clearly appears in line for Representative.
O-7, valid—for the same reason.
O-8, invalid—Ochoa written for Vice-President.
O-9, invalid—for the same reason.
O-10, O-11, O-12 and O-13—invalid—Protestant voted for Senator in the reversed order, and ballots O-11 and O-12, protestant voted for Senator.
O-14, valid—although it appears that the candidates were voted in the spaces for Senators but it appears that the candidates voted for are preceded by the corresponding office to which they were candidates, in this particular case, the word “Ocho” is preceded by the word “Representante” hence, it is valid.
O-15, valid—the repetition of “Garcia” does not make it invalid.
O-16, valid—for the same reason.
O-17, valid—“P. Capen” is stray vote.
O-18, valid—“Aurelio Ledesma” is stray vote.
O-19, valid—it is a stray vote.
O-20, valid—the word “Altabis” means “Altavas”.
O-21, valid—the word “Allaivas” stands for Altavas.”
O-22, valid—the word “Marcado” s stray vote.
O-23, valid—the first line for Senator “Vara” is for Vera.
O-24, valid—“Momero” stands for Romero.
O-25, valid—the word “gracia” in the line for Senator is for Garcia.
O-26, valid—“Alavas” is for Altavas.
O-27, valid—“Javieta” is for Javier.
O-28, valid—in the line for Senator “Atavas” is for Altavas.
O-29, valid Ochoa is written for Representative.
O-30, valid—Ochoa is written for Representative.
O-31 and O-32, valid—the word “Ochoa” is clearly written in the lines for Representative.

Precinct No. 17—Butuan

C-1, valid—"Felix Ordonia" is stray vote.
C-2, valid—punctuation mark does not make the ballot marked.
C-3, valid—for the same reason as above.
O-1, invalid—protestant voted for Senator.
O-2, valid—the word appearing in line for Representative is "Ocoa" idem sonans for "Ochoa."
O-3, valid—the word appearing in line for Representative is "Ochoa."
O-4, valid—the word appearing for Representative is "Eliza" sufficient to identify candidate "Eliza Ochoa," there being no other candidate of the same name.
O-5, valid—the word appearing in line for Representative is "Ochona" idem sonans for "Ochoa."
O-6, invalid—the initial "E. O." in line for Representative does not identify.
O-7, valid—Ochoa clearly appears to be voted for Representative.
O-8, valid—for the same reason.
O-9, valid—for the same reason.
O-10, valid—for the same reason.
O-11, valid—for the same reason.
O-12, valid—stain is accidental.

Precinct No. 18—Butuan

C-1, invalid—protestee voted for Senator.
C-2, valid—punctuation mark does not make the ballot marked.
C-7, valid—the line from the 7th line to the 16th line for Senators does not make the ballot marked.
C-17, valid—punctuation mark does not make the ballot marked.
O-1 and O-2, invalid—protestant voted for Senator.
O-3, valid—the word appearing "O Elisa" in line for Representative clearly identifies the candidate Eliza Ochoa, and the word "Ochoa" for President is stray vote.
O-4, valid—the word "Alitana" stands for Altavas."
O-5, valid—the word "Aliabas" is for Altavas, and the word "Mabag" for Mabanag.
O-6, valid—the word "Gibili" is for Cabili.
O-7, valid—for the same reason.
O-8, valid—the word "gars" on the 8th line for Senators is for Garcia.
O-9, valid—the word "Cabanag" is for Mabanag.
O-10, valid—the word "Gabili" is for Cabili.
O-11, valid—the word written "Acha" on line for Representative is idem sonans with the word "Ochoa."
O-12, valid—for the same reason.

O-13, valid—the word “E. R. Ochos” for Representative identifies the protestant, idem sonans.

O-15, valid—the flourishes and erasures do not make the ballot marked.

Precinct No. 20—Butuan

C-1, C-2, C-3 and C-4, invalid—Calo is voted for Senator and none appears in the lines for Representative.

C-5, valid—the punctuation mark does not make the ballot marked.

C-7, valid—“T Concing”, flourishes and erasures do not make the ballot marked.

C-9, valid—flourishes do not make the ballot marked.

C-13, valid—the words “Manoling Roxas” Quirino Pidiog” “Atty. Cacoy Calo” clearly identifies the candidate for Representative.

O-1, invalid—protestant voted for Senator.

O-2, invalid—protestant voted for Senator in the reversed order.

O-3, invalid—protestant voted for Senator.

O-4, invalid—protestant voted for Senator in the reversed order.

O-5, valid—the reappearance of the words “Roxas” “Ocha” and “Rodriguez” do not make this marked. Their reappearance in lines for Senators make the votes stray.

O-6, valid—the cross-out words are corrections. The intention of the voter is Eliza Ochoa, be voted for Representative.

O-7, valid—the intention of the voter is to vote for Ochoa.

O-8, valid—the word “Asuoao” is idem sonans for Ochoa.

O-9, valid—Ochoa clearly appears for Representative.

O-10, valid—the word “Asasa” is for Azanza.

O-11, valid—“Pelipe Ayas” is a stray vote.

O-12, valid—Ochoa clearly appears written in line for Representative.

O-13, valid—same reason.

O-14, valid—the differences of positions do not make the ballot marked.

O-15, valid—same reason; it appearing that the ballot is written by the same person.

O-16, valid—blank spaces for Senators do not make the ballot marked.

O-17, valid—for the same reason.

O-18, valid—for the same reason.

O-19, valid—there appears to be no intention to identify the ballot.

O-20, valid—for the same reason. Erasures do not make the ballot marked.

O-21, valid—“Elisa Ochoa” clearly written.

Precinct No. 21—Butuan

C-1, invalid—protestee voted for Vice-President.
C-3, valid—ink stains are accidental.
O-1, invalid—Ochoa voted for Senator.
O-2, invalid—for the same reason.
O-3, invalid—for the same reason.
O-4, valid—the word “Ocsa” is idem sonans for Ochoa.
O-5, valid—Ochoa is written for Representative.
O-6, valid—for the same reason.
O-7, valid—for the same reason.
O-8, valid—for the same reason.
O-9, valid—for the same reason.
O-10, valid—“Eloy Corioso” is stray vote.
O-11, valid—the word “Aras” in the 6th line is illegible
and the word “CAlarin” in line 13 is for Clarin.
O-12, valid—this is a misspelling of an illiterate voter.
O-13, valid—not marked ballot and written by the same
hand.
O-14, valid—prepared only by one hand.
O-15, valid—for the same reason.
O-16 and O-17, valid—the word “O. Calarin” is for Clari-
n. The ballots are not marked.

Precinct No. 23—Butuan

C-1, invalid—the name voted for Representative is “M.
Carlas” which is not idem sonans with M. Calo.
C-2, invalid—Calo vote for Senator.
C-3, invalid—for the same reason.
C-4, invalid—for the same reason.
C-5, invalid—for the same reason.
C-6, invalid—for the same reason.
C-16, invalid—votes written by the same person and
flourishes or deep letters do not make the ballot
marked.
C-20, valid—punctuation mark does not make the ballot
marked.
C-21, valid—for the same reason.
C-22, valid—for the same reason.
C-24, valid—for the same reason.
C-25, valid—the words “Calo” in lines for Vice-President
and Representative appear. The vote for Vice-
President is stray vote and the vote for Repres-
entative is valid.
C-26, valid—for the same reason.
C-27, valid—for the same reason.
C-28, valid—for the same reason.
C-29, valid—the names of persons who are not candidates
are stray votes.
C-30, valid—for the same reason.
C-31, valid—for the same reason.
C-32, valid—for the same reason.

O-1, invalid—Ochoa voted for Senator.

O-2, invalid—for the same reason.

O-3, invalid—for the same reason.

O-4, invalid—for the same reason.

O-5, invalid—for the same reason.

O-6, invalid—protestant voted for Vice-President.

O-7, invalid—for the same reason.

O-8, valid—the words “Senara Ochora” appear midway between the Vice-President’s line and the Representative’s line. There being no candidate for Vice-President of that name, it appears that the voter voted for Ochoa for Representative.

O-9, invalid—with the words “M. Calo” and “Ochoa” appearing on the same, it cannot be determined for whom the voter voted.

O-10, valid—this is a feeble attempt of an unintelligent voter to prepare his ballot. It appearing on line for Vice-President the word “Rod” which clearly shows the intent of the voter to vote for Rodriguez for Vice-President, it follows that the word “Ochoa” below and near the line for Representative is intended for Ochoa for Representative.

O-11, valid—Ochoa written for Vice-President is stray vote but valid for Representative.

O-12, valid—the appearance of non-candidates for Senators are stray.

O-13, valid—the fact that only one Senator was voted does not make the ballot marked.

O-14, valid—for the same reason.

O-15, valid—for the same reason.

O-16, valid—this is a feeble attempt to vote for Ochoa, but the vote is intelligible and idem sonans.

O-17, valid—idem sonans.

O-18, valid—idem sonans.

O-19, valid—idem sonans.

O-20, valid—idem sonans.

O-21, valid—idem sonans.

O-22, valid—idem sonans.

O-23, valid—idem sonans.

O-24, valid—cross-out name, corrections of the voter for Vice-President.

O-25, valid—for the same reason.

O-26, valid—for the same reason.

O-27, valid—for the same reason.

O-28, valid—erasures do not make the ballot invalid.

O-29, valid—for the same reason.

O-30, valid—“Pale” is stray vote.

O-31, valid—“Allavas” is for Altavas.

O-32, valid—Cabili is a candidate for Senator.

O-33, valid—it is a stray vote.

O-34, valid—“Pascal Cabili” is a stray vote.

Precinct No. 24—Butuan

C-1, void—M. Calo voted for Vice-President.

C-2, void—for the same reason.

C-3, void—under the case inunciated, *Confesor vs. Lutero* on Ballot Exhibit L-8, Kabutuan, Precint No. 8.

C-4, valid—idem sonans.

C-5, valid—"M. Calo" is written for representative.

C-6, valid—the word "Calos" is idem sonans for Calo.

C-29, valid—the vote for E. Ochoa for Senator is a stray vote.

C-30, valid—for the same reason.

C-31, valid—"Donato Gebya" is a stray vote.

C-43, valid—punctuation marks do not make a ballot marked.

C-44, valid—for the same reason.

C-45, valid—for the same reason.

C-46, valid—for the same reason.

C-47, valid—for the same reason.

C-48, valid—for the same reason.

C-49, valid—for the same reason.

C-60, valid—ink spot is accidental.

C-61, valid—for the same reason.

O-1, void—E. Ochoa having been voted for Vice-President.

O-2, void—for the same reason.

O-3, void—for the same reason.

O-4, void—for the same reason.

O-5, void—for the same reason.

O-6, void—for the same reason.

O-7, void—E. Ochoa voted for Senator.

O-8, void—ballot illegible.

O-9, valid—space for Representative is voted for Ochoa.

O-10, valid—at first glance of what is written herein it seems to read "Elena Ochoa," however, on closer scrutiny it may be read as "Elessa Ochoa" and holding presumption in favor of the validity of the ballot, we will accept this ballot to be valid.

O-11, valid—the word "Ohoa" appearing in the name for Representative, is intended for "Ochoa."

O-12, valid—the word "Eliza" appears in the line for representative, and there being no other candidate by that name for Representative, the voter intended that the same be counted in favor of Elisa Ochoa.

O-13, valid—erasures or crosses do not make a ballot marked. It appearing that the same is only a correction of the name of the candidate voted for.

O-14, valid—for the same reason.

O-15, valid—for the same reason.

O-16, valid—for the same reason.

O-17, valid—for the same reason.

O-18, valid—blank for senators do not make a ballot marked.

O-19, valid—for the same reason.

O-20, valid—"Gabili" stands for Cabili.

O-21, valid—for the same reason.

O-22, valid—"C. Darcia" stands for Garcia.

O-23, valid—"Garcia" stands for candidate Carlos P. Garcia.

O-24, valid—the word "Gariza" stands for Garcia.

O-25, valid—"Jusi Carcia" is stray vote.

O-26, valid—the word "Aliavas" is Altavas for Senator.

O-27, valid—the word "Alliavas" is Altavas for Senator.

O-28, valid—same reason.

O-29, valid—the name "Tonio Atiga" is stray vote; there appearing not evidence to the fact that said person is a registered voter in said precinct.

O-30, valid—the word "Sav" is a stray vote.

O-31, valid—the word "Moncado" is a stray vote.

Precinct No. 25—Butuan

C-1, void—M. Calo voted for Senator.

C-3, valid—capital letters do not make a ballot marked.

C-27, valid—punctuation marks do not make a ballot marked.

C-28, valid—for the same reason.

C-29, valid—for the same reason.

C-30, valid—for the same reason.

C-40, valid—flourishes and dashes do not make a ballot marked.

O-1, void—Elisa Ochoa voted for President.

O-2, void—protestant voted for Vice-President.

O-3, void—protestant voted for Senator.

O-4, void—protestant voted for Senator.

O-5, valid—idem sonans.

O-6, valid—for the same reason.

O-7, valid—prepared by same hands.

O-8, valid—prepared by same hands.

O-9, valid—prepared by same hands.

O-9A, valid—prepared by same hands.

O-10, valid—ballot not marked.

O-11, valid—same reason.

O-12, valid—the word "Elisa Rosales" appears for representative. It happening that the protestant is known as "Elisa Rosales" the vote written sufficiently identify the candidate Elisa Ochoa.

O-13, valid—punctuation marks do not invalidate the ballot.

O-14, valid—written by same hands.

O-15, valid—the word "Aran" is for Arranz; and "Drokno" is for Diokno.

O-16, valid—"Jose Allavas" is for Altavas.

Precinct No. 26—Butuan

C-1, void—M. Calo voted for Senator.
C-2, void—for the same reason.
C-5, valid—it appears “M. Calo.”
C-6, valid—it appears “M. Calo.”
C-8, valid—punctuation marks do not make the ballot marked.
C-18, valid—marks and erasures do not make the ballot marked.
O-1, void—E. Ochoa voted for Vice-President.
O-2, void—for the same reason.
O-3, void—E. Ochoa voted for Senator.
O-4, void—for the same reason.
O-5, void—illegible.
O-6, valid—the word “Otsoa” written on the line for representative sufficiently identifies the word “Ochoa” by idem sonans.
O-7, valid—Ochoa clearly appears on the line for Representative.
O-8, valid—for the same reason.

Precinct No. 28—Butuan

C-1, void—M. Calo voted for Vice-President.
C-2, void—M. Calo voted for Senator.
C-3, void—for the same reason.
C-4, valid—the marks is not intended to mark the ballot.
C-7, valid—“Sottos Cuinco” is written at the top, opposite the word Representative.
C-9, valid—punctuation marks do not make a ballot marked.
O-1, void—Ochoa voted for Senator.
O-2, void—for the same reason.
O-3, void—for the same reason.
O-5, void—protestant voted for Vice-President.
O-6, valid—“enting” is stray vote.
O-7, valid—“Allavas” stands for Altavas.
O-8, valid—for the same reason.
O-9, valid—for the same reason.
O-10, valid—“Rolovas” is a stray vote.
O-11, valid—“Manabeg” stands for Mabanag.
O-12, valid—“Gibili” stands for Cibili, and “Degno” stands for Diokno, candidates for Senator.
O-14, valid—“Garcia el goles” stands for Garcia, for Senator.
O-15, valid—the word “Rumiro” and Allavas” stands for the candidates for Senator.
O-16, valid—Punctuation marks do not make a ballot marked.
O-17, valid—Erasures and marks are not intentional.
O-18, valid—Ballot is not marked.

O-19, valid—The word “Elisa” appears clearly written in the line for representative. There being no other candidate by the name of Elisa, it is apparent that the voter intended to vote for Elisa Ochoa.

O-20, valid—the word “Osoa” is clearly written in the name for representative and stands for Ochoa.

Precinct No. 1—Cabadbaran

C-1, void—M. Calo voted for vice-president.

C-2, valid—There being no evidence that the name “Quentin” written is a registered voter, same is considered a stray vote.

C-3, valid—“A. Curato” is a stray vote.

C-4, valid—“Pedro O. Ocampo” is a stray vote, there being no evidence that he is a registered voter.

C-14, valid—Iink stains accidental.

C-15, valid—For the same reason.

C-16, valid—Same hands.

C-17, valid—Written by same hands. The use of blue pencil and the ordinary pencil does not invalidate the ballot.

C-18, valid—For the same reason.

C-19, valid—It appears that the word “M. Calo” is voted for in the line for representative.

C-21, valid—The use of punctuation marks do not invalidate the ballot.

O-1, void—Ochoa voter for vice-president.

O-2, void—Ochoa voted for senator.

O-3, valid—It appears that in the lines for senatorial candidates the following appears: President: Os-mena; Representative: Ochoa; Senator: Mabanag, and the rest for senatorial candidates. This being so, the voter has clearly made his intention to vote for Ochoa for representative. Also, written by the same hands.

O-4, valid—The name “Geraldo Blewanos” for vice-president is a stray vote.

O-5, valid—The name “Campo Vic” is a feeble attempt to write for a candidate and may be considered as a stray vote.

O-6, valid—“Sansa Pas” is an attempt to write for Pacual la Sancha. Ochoa appears in the line for representative.

O-7, valid—“De Lizo” is a stray vote.

O-8, valid—“Love” is a feeble attempt of the voter to vote for a candidate. May appear to be voting for Lava.

O-9, valid—“Javua” is a feeble attempt to write “Javier” for senator.

O-10, valid—“Camino” is a stray vote.

O-11, valid “Señor Garc” is for Senator Garcia.

O-12, valid—Ochoa is voted for representative and the appearance of the word “Elisa” for senator does not invalidate the ballot.

O-13, valid—“Allavas San Jose” is a feeble attempt to write for Altavas. “San Jose” is a stray vote.

O-14, valid—“Dr. Moncado” is a stray vote.

O-15, valid—“Arapleta” is for Araneta.

O-16, valid—The appearance of “Mr. Javier” for senator is proper.

O-17, valid—The appearance of the word “Carlos Padilla” in the space for senator is properly admissible; it being claimed that this may be considered a stray vote for senator.

O-18, valid—“Tolosac” is stray vote.

O-19, valid—“Rodriguez” and “Insua” are both candidates for senator. It is a mistake in placing of the names.

O-20, valid—The presence of the word “Padilla” in the line opposite senator may be considered admissible and that “Padilla” may be considered as stray vote.

O-21, valid—Blank spaces do not make the ballot marked, and the word “Vero Lava” is a feeble attempt on the part of the voter to vote for Lava.

O-22, valid—Same hands.

O-23, valid—Legible for Ochoa.

O-24, valid—Idem sonans for Ochoa.

Precinct No. 5—Cabadbaran

C-1, void—M. Calo voted for vice-president.

C-2, valid—“M. Claeno” in line for representative is idem sonans for M. Calo.

C-3, valid—Same hands.

C-4, valid—The difference of the use of pencils does not invalidate the ballot provided it is written by the same hands.

C-5, valid—Same hands.

C-6, valid—Same hands.

C-7, valid—Same hands.

C-8, valid—Same hands.

C-13, valid—The appearance of “Diokno” without the Christian name does not invalidate the ballot.

C-14, valid—The absence of Christian name does not invalidate the ballot.

C-15, valid Blank spaces for senator do not make the ballot marked.

C-16, valid—Punctuation marks do not make the ballot marked.

O-1, void—Ochoa voted for senator.

O-2, void—Ochoa voted for senator.

O-3, void—Ochoa voted for Vice-President.

O-4, valid—Marks at the back of the ballot is accidental.

O-5, valid—The name “Calo” appearing for senator is stray vote.

O-6, valid—Differences in the figures does not identify the ballot provided it appear that the ballot is prepared by the same hands.

O-7, valid—For the same reason.

O-8, valid—For the same reason.

O-9, valid—Ochoa clearly appears written for representative.

O-10, valid—For the same reason.

O-11, valid—The name “Ocbroa” is idem sonans for Ochoa.

Precinct No. 6—Cabadbaran

C-1, void—M. Calo voted for vice-president.

C-2, void—M. Calo voted for senator.

C-3, valid—“Ciriaco Ronquillo” is considered stray vote; there being no evidence that the name is a registered voter.

C-4, valid—“Cerry Bonny” is stray vote.

C-5, valid—Same hands.

C-6, valid—Same hands.

C-7, valid—Same hands.

C-10, valid—Punctuation marks do not make the ballot marked.

C-20, valid—The small arrow is an indication that the voter wants to vote for Carlos Garcia as senator.

C-23, valid—The absence of the Christian name of the candidate does not make the ballot marked. Besides the fact that the voter voted alternately in the lines for senators without Christian name, although in the last four lines the same is not true because the Christian names on the last four candidates for senators indicate that the voter must have forgotten the Christian names of the candidate for senators voted for.

O-1, void—It appearing clearly in the line for vice-president the word “Ochoa” which clearly identify that the protestant is voted for vice-president. It appears in the line for representative in the same ballot the word “Ilsacua,” it appears that the voter voted for another person and Elisa Ochoa appears in the line for vice-president. There being a difference in the way Elisa Ochoa has been written from “Ilsacua” the name written for representative, it cannot be inferred that the voter intended to repeat the word “Ochoa” in the line for representative. The intention being apparent that the voter voted for Elisa Ochoa for vice-president, he could not have voted for the same person for representative. Hence the ballot is rejected.

O-2, void—Protestant voted for vice-president.

O-3, void—Protestant voted for senator.

O-4, void—Protestant voter for senator.

O-5, valid—Same hands. The repetition of the word “lava” does not make the ballot invalid.

O-6, valid—The word “Araneto” is for Araneta and “Garcio” is for Garcia; “Inaua” is for Insua; “Laro” is for Lava, candidates for senators.

O-7, valid—“Arpeta” is for Araneta.

O-8, valid—It appears that “Insua” and “Lava” are both candidates for senators; it presupposes that the voter intended to vote for them in the same lines. This fact does not make the ballot marked. “Ciriaco Ronquillo” is stray vote.

O-9, valid—M. Calo is stray vote.

O-19, valid—M. Calo is stray vote.

O-11, valid—“Mongcado” is stray vote.

O-12, valid—The word “Muan” apparently is a feeble attempt of an illiterate to vote for Insua.

O-13, valid—“Gabili” is for Cabili.

O-14, valid—“Cable” is for Cabili.

O-15, valid—“J. Ramon” is a feeble attempt to write J. Romero.

O-16, valid—Same hands.

O-17, valid—Idem sonans.

O-18, valid—Idem sonans.

O-19, valid—Eerausres does not make the ballot invalid.

Precinct No. 10—Cabadbaran

C-1, rejected—M. Calo voted for vice-president.

C-2, rejected—M. Calo voted for senator, line 3.

C-3, rejected—the words “shoot all the money” appearing on line 1 for Senators identify the ballot.

C-4, admitted—the word “Balintin” on line 1 for Senators does not affect the validity of the vote for representative.

C-5, admitted—the word “Abili” on line 1 for senator evidently refers to Tomas Cabili, a candidate for Senator.

C-6, admitted—the name “Juan Labos” voted for Vice-President, and the name “Pedro Isidro” on the 5th line for Senators are stray votes.

C-7, admitted—the names “Kilito Mantalban” “Ebad Amamanwa” and “Sonhay” are stray votes.

C-8, admitted—“Pedro Dagohoy” on line 3 for Senators is stray vote.

C-9, admitted—“Palaso” on line 16 for Senators is stray vote.

C-10, admitted—the name “A. Bagot” on line 14 for Senators is stray vote.

C-11, admitted—the names “G. Noval” “Esperanza Plazo” and “D. Malacay” are stray votes.

C-12, admitted—“V. Boloto” is a stray vote.

C-13, admitted—“S. Pendlor” on line 4 for Senators evidently intended for Salipada Pendatun.

C-14, admitted—the name “Juan de la Curoz” on the 6th line for Senators is stray vote.

C-15, admitted—the names appearing in the spaces for Senators which are not names of the candidates are stray votes.

C-16, admitted—the alleged stains are accidental marks.

C-17, admitted—the alleged stains are accidental.

C-18, admitted—the line appearing at the back of the ballot, upper portion, is evidently accidental.

C-19 and C-20, admitted—the alleged marks are accidental.

C-21, admitted—the alleged mark is accidental.

C-22, admitted—the names “M. M. Calo” is just below the line for Representative but opposite the word “representante”.

C-23, admitted—the alleged pencil marks appearing on this exhibit do not exist.

C-34, admitted—the person voted for Representative is “M. Galo” idem sonans of M. Calo.

C-35, admitted—although not very plainly written, what appears to be voted for Representative is “M. Calo”.

C-36, admitted—E. Ochoa voted for Vice-President is stray vote.

C-39, admitted—the alleged unnecessary marking appearing on line 4 is due to the correction made by the voter who is evidently illiterate.

C-40, admitted—The alleged traces which are supposed to be marks are due to the ignorance of the voter.

C-41, admitted—what was crossed out in the line for Vice-President was due to the desire of the voter to correct his mistake.

C-42, admitted—the period after the name “E. Quirino” does not identify the ballot.

O-1, rejected—Eliza Ochoa is voted for Vice-President.

O-2, rejected—Garcia is voted for Representative, “E. Otsaya” is outside the space.

O-3, rejected—Ochoa is voted for Vice-President.

O-4, rejected—Ochoa is voted for Vice-President.

O-5, rejected—Ochoa is voted for Vice-President.

O-6, rejected—Ochoa is voted for Vice-President, “Insua” is voted for Representative.

O-7, rejected—“C. Garcia” is voted for Representative while the name “E. Ochoa” appears opposite of Vice-President.

O-8, admitted—although the name of Ochoa is below the line for Representative, it is opposite the word “Representante.”

O-9, rejected—Ochoa voted for Vice-President.

O-10, rejected—Ochoa voted for Senator on line 16.

O-11, rejected—Ochoa voted for Senator on line 2.

O-12, rejected—Ochoa voted for Senator on line 2.

O-13, admitted—although below the line, the name “Elisa R. Ochoa” is exactly opposite the word “Representante.”

O-14, rejected—Eliza Ochoa is voted for Vice-President.

O-15, rejected—The thumb mark appearing on the back of the same is not accidental.

O-16, admitted—The space left blank for Sanators do not mark the ballot.

O-17, admitted—The name “Hal C. Garcia” voted for Senator is stray vote.

O-18, admitted—Garcia is voted for Senator.

O-19, admitted—The name “Garcia L” on line 1 for Senator is stray vote.

O-20, admitted—“Mar Garcia” on line 1 for Senator is stray vote.

O-21, admitted—The name “Rodriguez” below the name “Vice-President” was misplaced.

O-22, admitted—Blank spaces for Senators do not identify the ballot, and person voted for senator who is not a candidate is stray vote.

O-23, admitted—Blank spaces do not mark the ballot.

O-24, admitted—Blank spaces for Senators do not identify the ballot; “hasay” voted for Senator is stray vote.

O-25, admitted—“Juan de la Cruz” voted for Senator is stray vote.

O-26, admitted—“J. Posong” voted for Senator, line 6, is stray vote.

O-27, admitted—“Posong” voted for Senator, line 8 is stray vote.

O-28, admitted—On line 4, the vote evidently started a name but desisted in continuing it. The voter is ignorant.

O-29, admitted—“Playo” voted for Senator is stray vote.

O-30, admitted—“E. Plazo Confesor” voted for Senator, line 3, is stray vote.

O-31, admitted—“Plazo” voted for Senator, line 4, is stray vote.

O-32, admitted—The syllable “Ad” before “Diokno” for Senator is due to the mistake of the voter.

O-33, admitted—the syllable “Olo” on line 4 for Senators is due to the mistake of the voter.

O-34, admitted—“Malbas” voted for Senator, line 3, is stray vote.

O-35, admitted—“Malbas” voted for Senator, line 1, is stray vote.

O-36, admitted—“Malbas” voted for Senator, line 5, is stray vote.

O-37, admitted “Malbas” which appear again for Senator may be intended for Altavas.

O-38, admitted—“Enatalio Palazo” voted for Senator is stray vote.

O-39, admitted—"Moncado" voted for Senator is stray vote.

O-40, admitted—"Antonio Ebad" voted for Senator is stray vote.

O-41, admitted—"Boston" appearing on line 10 for Senators is surplusage.

O-42, admitted—"Moncado" on line 12, for Senator is stray vote.

O-43, admitted—"N. Colas" voted for Senator, line 4, is stray vote.

O-44, admitted—"Don Piya Confesor" voted for Senator, line 1, and "E. Rogas" voted for Senator, line 16, are stray votes.

O-45, admitted—"B. Botcon" voted for Senator, line 16, is stray vote.

O-46, admitted—"Roxas" voted for Senator, line 16, is stray vote.

O-47, admitted—"Mora" voted for Senator, line 16, is stray vote.

O-48, admitted—"Gregorio Noval" voted for Senator, line 16, is stray vote.

O-49, admitted—The name "Carlos Garcia" was misplaced by the voter.

O-50, admitted—Same reanson as O-49.

O-51, admitted—"Las" appearing on line 1 for Senator, before the family name "Garcia" evidently refer to Carlos Garcia.

O-52, admitted—The name written on the space for Representative is "Ochax," sufficient enough to identify Ochoa.

Precinct No. 11—Cabadbaran

C-1, rejected—Calo voted for Vice-President.

C-2, rejected—"Marcos Callo" is voted for Vice-President.

C-3, rejected—Calo voted for Vice-President.

C-4, rejected—Calo voted for Vice-President.

C-5, admitted—"Cosinlas" voted for Senator, line 16, is stray vote.

C-6, admitted—"mar Concing" voted for Senator, line 11 for Senators, is stray vote.

C-7, admitted—"Cacenas" voted for Senator, line 4, is stray vote.

C-8, admitted—The alleged Roman numerals do not appear to be so, but seem to be more properly to be initials.

C-9, admitted—The fact that the name "Tomas Cabili" was written in full while the rest of the senatorial candidates were written with initials only does not make the ballot marked.

C-12, admitted—A close examination of this ballot revealed that it was written only by one hand.

C-15, admitted—The fact that ten candidates for Senators were written with their initials while the rest without initials does not make the ballots marked.

C-19, admitted—"V. Sotto" appearing alone for Senator does not make the ballot marked.

C-22, admitted—The ballot is not written by two hands.

C-23, and C-24, admitted—The fact that the name of protestee is followed by period in these ballots does not make the ballots marked.

O-1, rejected—Ochoa voted for Senator, line 4.

O-2, rejected—Eliza R. Ochoa is voted for Senator, line 2.

O-3, rejected—Ochoa voted for Senator, line 3.

O-4, rejected—Ochoa voted for Senator, line 3.

O-5, rejected—"Rosales" maiden name of protestant, is voted for Vice-President.

O-6, rejected—Ochoa voted for Vice-President.

O-7, rejected—Eliza Ochoa for Vice-President.

O-8, rejected—"E. Ochava" is voted for Vice-President.

O-9, rejected—Ochoa voted for Vice-President.

O-10, rejected—Eliza Ochoa voted for Vice-President.

O-11, rejected—Eliza R. Ochoa is voted for Vice-President.

O-12, admitted—The initials, unfinished, appearing on lines 6 to 16 on the spaces for Senators are due to the ignorance of the voter.

O-13, admitted—The names voted for Senators on lines, 6, 7 and 8 who are not candidates for the positions are stray votes.

O-14, admitted—The Voter who was ignorant evidently wanted to write "Manuel Roxas" after the name of Garcia for Senator.

O-15, admitted—the alleged mark was probably due to the desire of the voter to repeat the vote of Tomas Cabili.

O-16, admitted—"Garcia" was written just opposite the word "Senator," but the voter realizing his mistake, crossed out the same.

O-17, admitted—The fact that Garcia was voted for Senator alone does not make the ballot marked.

O-18, admitted—The vote on line 11 for Senator is stray vote. The alleged dots in line 8 for Senator does not make the ballot marked.

O-19, admitted—The vote "R. Hermosua" on line 13 for Senators is stray vote.

O-20, admitted—Although not plainly written, what appears thereon is "ochuom."

O-21, admitted—What appears thereon is "Iliza Alsua."

O-22, admitted—The person voted for is "Oca."

O-23, admitted—The person voted for is "Osloa."

Precinct No. 15-A—Cabadbaran

C-1, rejected—"M. M. Calo" voted for Vice-President.

C-2, rejected—"M. M. Calo" voted for Senator, line 11, reversed.

C-3, admitted—"Zoilo Cepeda" voted for Senator is stray vote.

C-4, admitted—same reason as C-3.

C-5, admitted—"Z, Cepeda" for Senator is stray vote.

C-6, admitted—"Al" on line 16 for Senators is stray vote.

C-7, admitted—The initials "J. A." and "B x S" on lines 1 and 2 for Senators are due to the ignorance of the voter.

C-8, admitted—"Pacifico D" on line 4 for Senators is stray vote.

C-9, admitted—This ballot was prepared by one hand.

C-10, admitted—This ballot was prepared by one hand.

C-11, admitted—This ballot was prepared only by one hand.

C-12, admitted—"Alaba S. Pendatun" on line for Senator is for Pendatun.

C-13, admitted—"Alaba R. Torres" is a mistake of the voter only.

C-16, admitted—"Nonoy" before the word "Torres" is evidently a vote for R. Torres.

O-1, rejected—"Achoa" is voted for Senator, line 2.

O-2, rejected—"E. R. Ochoa" voted for Senator, line 3.

O-3, admitted—Persons not registered candidates for Senators and voted for do not invalidate the ballot.

O-4, admitted—"Luceno" on line for Senator is stray vote.

O-5, admitted—"Atty. Garcia" line for Senator, refers to senatorial candidate Garcia.

O-6, admitted—"Dalino Pan" voted for Senator, line 5, is stray vote.

O-7, admitted—"Dalino" on line 1 for Senator, is stray vote.

O-8, admitted—prepared by one hand.

O-9, admitted—prepared by only one hand.

O-10, admitted—"Jr. Martinez" refers to senatorial candidate Martinez.

O-11, admitted—"Jr. Osmena" for President does not affect the validity of the vote of Ochoa.

O-12, admitted—"Jr. Confessor" does not affect the validity of the vote for Ochoa.

O-13, admitted—"Hal. Martinez" on line for Senator does not affect the validity of the vote for Ochoa.

O-14, admitted—"Dr." on line 1 for Senator does not affect the validity of the vote for Ochoa.

O-15, admitted—The title "Dr." before "Rodriguez" does not affect the validity of the vote for Ochoa.

O-16, admitted—The fact the Osmena, Jr. was voted for President, it does not affect the validity of the vote for Ochoa.

O-17, admitted—The hole in the ballot must be due to an accident.

O-18, admitted—prepared by one hand.

O-19, O-20, O-21, admitted—The blanks in the spaces for Senators do not make the ballot marked.

O-22, admitted—The fact that line 11 for Senator is blank and that “Mr. Lava” was voted for Senator on line 16 do not invalidate the ballot.

O-23, admitted—The person voted for Representative is “Ochea” idem sonans for Ochoa.

O-24, admitted—not very well written, but the name voted for Representative is “Achoa,” idem sonans of Ochoa.

O-25, admitted—not well written, but the name written for is “Zlisa Ochoo”, idem sonans of Eliza Ochoa.

O-26, admitted—The person written for is “Achus”.

O-27 to O-30, admitted—These ballots were prepared by one hand each.

Precinct No. 16—Cabadbaran

C-1, rejected—M. M. Calo voted for Vice-President.

C-2, rejected—M. M. Calo voted for Vice-President.

C-3, rejected—M. Calo voted for Senator, line 3.

C-4, admitted—name voted for Senator, line 1, is stray vote.

C-5, admitted—“Page on line 3 for Senators must have been intended for Paguia.”

C-6, admitted—name voted for in line 3 for Senators is stray vote.

C-7, admitted—“M. Arran” on line 10 for Senators is for Melecio Arranz.

C-8, admitted—What was written on lines 12 and 13 for Senators do not affect the validity of the vote for Calo.

C-9, admitted—Ochoa for Vice-President is stray vote.

C-25, admitted—prepared by only one hand.

C-26, admitted—prepared by only one hand.

C-27, admitted—prepared by only one hand.

C-28, admitted—prepared by only one hand.

C-29, admitted—prepared by only one hand.

C-30, admitted—prepared by only one hand.

C-31, admitted—prepared by only one hand.

O-1, rejected—Ochoa voted for Senator, line 3.

O-2, admitted—What is written on line 16 for Senators does not affect the validity of the vote for Ochoa.

O-3, admitted—“Loto” on line 1 for Senators, does not affect the validity of the vote for Ochoa.

O-4, admitted—“Upe Garcia” on line 1 for Senators does not affect the validity of the vote for Ochoa.

O-5, admitted—same reason as O-4.

O-6, admitted—same reason as O-4.

O-7, admitted—“Lo garsiyo” on line 1 for Senators refers to Carlos Garcia.

O-8, admitted—“Manoy Peping” on line 1 for Senators does not affect the validity of the vote for Ochoa.

O-9, rejected—The repetition of the word “face” before each senatorial candidate serves to identify this ballot.

O-10, admitted—The fact that the names voted for were preceded by either “Hon.” “Mr.” or “Compadre” does not affect the validity of the vote.

O-11, admitted—The fact that the names of senatorial candidates were written with initials only does not affect the validity of the vote.

O-12, admitted—“Mama,” “Carling,” “Brath” and Indong” do not destroy the validity of the vote.

O-13, admitted—That some of the Senators were voted with full names, some with initials and some with the family names only, does not invalidate the ballot.

O-14, O-15, O-16, admitted—That there are some blank spaces in the lines for Senators do not invalidate the ballot.

O-17, O-18, O-19, admitted—The fact that the spaces for Vice-President in each of these ballots is in blank does not invalidate the ballot.

O-20, O-21, admitted—The letters crossed out in these ballots were due to the desire of the voter to correct his vote.

O-22, admitted—“Domero” on line 16 for Senators must have been intended for Romero.

O-23, admitted—That there is wide margin in the space for senator does not invalidate the same.

O-24, admitted—prepared by only one hand.

O-25, admitted—prepared by only one hand.

O-26, admitted—prepared by only one hand.

O-27, O-28, admitted—“Osmexa” voted for President was mistaken way of writing for “Osmena.”

Precinct No. 17—Cabadbaran

C-1, rejected—M. M. Calo voted for Vice-President.

C-2, rejected—“E Calo” voted for Vice-President.

C-3, rejected—M. M. Calo voted for Senator, line 3.

C-4, rejected—same reason as C-3.

C-5, rejected—same reason as C-3.

C-6, rejected—same reason as C-3.

C-7, rejected—same reason as C-3.

C-8, rejected—M. M. Calo voted for Senator, line 13, reversed.

C-15, admitted—Period after protestee’s name does not mark the ballot.

C-17, admitted—“A. Mongaya” voted for Senator, line 5, is stray vote.

C-18, admitted—“E. Maga” voted for Senator, line 11, is stray vote.

C-19, admitted—“J. Areco” voted for Senator, line 3, is stray vote.

C-22, admitted—Ochoa for vice-president is stray vote.

C-23, admitted—The fact that the ballot was written by two kinds of pencils does not invalidate the vote.

C-34, admitted—prepared only by one hand.

C-36, admitted—prepared only by one hand.

C-37, admitted—prepared only by one hand.

C-38, admitted—prepared only by one hand.

C-39, admitted—prepared only by one hand.

C-40, admitted—prepared only by one hand.

C-41, admitted—prepared only by one hand.

C-42, admitted—prepared only by one hand.

C-43, admitted—prepared only by one hand.

C-44, admitted—The fact that "Garcia" is written without initial does not make the ballot marked.

O-1, rejected—"Eliza Rosales" voted for Vice-President.

O-2, rejected—Ochoa voted for Vice-President.

O-3, rejected—Ochoa voted for Senator.

O-4, rejected—Ochoa voted for Senator, line 3.

O-5, O-6, admitted—That only one Senator was voted for in each of these ballots does not invalidate the same.

O-7, O-8, admitted—The blank spaces on these ballots do not invalidate the same.

O-9, admitted—same reason as Exhibits O-7 and O-8.

O-10, admitted—same reason as O-9.

O-11, admitted—same reason as O-9.

O-12, admitted—same reason as O-9.

O-13, admitted—erasures are due to the desire of the voter to correct his vote.

O-14, admitted—prepared only by one hand.

O-15, admitted—prepared only by one hand.

O-16, admitted—"J. Antono" on line for Senator must have been intended for J. Antonio Araneta.

O-17, admitted—wrong name on line 3 for Senators does not affect the vote.

O-18, admitted—The person voted for is "Elisa".

O-19, admitted—Name appearing thereon is "Ochas", idem sonans of Ochoa.

Precinct No. 18—Cabadbaran

C-1, rejected—M. Calo voted for Vice-President.

C-2, rejected—Calo voted for Senator, line 1.

C-3, rejected—Calo voted for Senator, line 2.

C-4, and C-5, admitted—names of persons voted for Senators who were not candidates do not invalidate the ballots.

C-6, admitted—same reason as above.

C-7, admitted—same reason as above.

C-8, admitted—Names appearing on lines 4 and 11 for Senators are stray votes.

C-9, admitted—"Perang" on line 8 for Senators is stray vote.

C-10, admitted—not well written but the thing written on the space for Representative can be read as "Calo."

C-14, admitted—prepared only by one hand.

C-15, admitted—prepared only by one hand.

C-16, admitted—prepared only by one hand.

C-17, admitted—prepared only by one hand.

C-21, admitted—blanks in the spaces for Senators and persons not candidates voted for Senators do not invalidate the ballot.

O-1, rejected—Eliza voted for Vice-President.

O-2, rejected—Eliza R. Ochoa voted for Vice-President.

O-3, rejected—Eliza Ochoa voted for Senator, line 1.

O-4, rejected—Ochoa voted for Senator, line 14, reversed.

O-5, admitted—"Pio Morta" is stray vote.

O-6, O-7, admitted—Scratches were due to the desire of the voters to correct their vote.

O-8, O-9, admitted—Scratches are corrections made by the voters.

O-10, admitted—prepared only by one hand.

O-11, admitted—prepared only by one hand.

O-12, admitted—That the ballot was written in handprint does not invalidate the ballot.

O-13, admitted—The alleged image of a man does not exist.
What appears thereon are accidental marks.

O-14, admitted—The alleged mark was the beginning of a name which the voter did not continue.

O-15, admitted—not well written but Ochoa can be read on the space for Representative.

Precinct No. 20—Cabadbaran

C-1, rejected—Calo written opposite the word "Senator".

C-2, admitted—"Juan de la Cruz" voted for Senator is stray vote.

C-3, admitted—Vote for "Mr. Solonia" for Senator is stray vote.

C-4, admitted—"Librada L." for Senator is stray vote.

C-7, admitted—prepared only by one hand.

C-8, admitted—prepared only by one hand.

C-9, admitted—That the name "Roxas" written with colored pencil, while the rest in lead pencil, does not invalidate the ballot. (Rule 10, Sec. 144, Act 357).

C-10, admitted—prepared only by one hand.

C-11, admitted—prepared only by one hand.

C-12, admitted—prepared only by one hand.

C-25, C-26, C-27, C-28, C-29, admitted—The punctuations after the name "Calo" in these ballots do not invalidate the same.

C-30, admitted—That only surnames of senatorial candidates were written do not invalidate the ballot.

C-31, admitted—That only the family names of Confesor and Javier were written do not make the ballot marked.

O-1, rejected—Ochoa voted for Senator, line 13 reversed.
O-2, rejected—Ochoa voted for Vice-President.
O-3, admitted—That two names were hand printed do not invalidate the vote.
O-4, admitted—prepared only by one hand.
O-5, admitted—The blank spaces do not invalidate the ballot.
O-6, admitted—The name on line 2 for Senators is stray vote.
O-7, admitted—“Aabana”, voted for Senator, is stray vote.
O-8, admitted—“Vera” was written twice, but the second one was erased.
O-9, admitted—prepared only by one hand.
O-10, admitted—prepared only by one hand.
O-11, rejected—Ochoa was written opposite the “Vice-Presidente,”
O-12, rejected—The person voted for Representative is “Rohao,” most likely Roxas.
O-13, admitted—person voted for is “Ochaa”, idem sonans of “Ochoa”.
O-14, admitted—The alleged tampering was due to the correction made by voter.

Precinct No. 22-A—Cabadbaran

C-1, rejected—Calo voted for Vice-President.
C-2, rejected—M. M. Calo voted for Senator, line 13, reversed.
C-3, rejected—M. Calo voted for Senator, line 2.
C-4, rejected—“G. Calo” voted for Senator, line 2.
C-5, admitted—Vote “DadoB.” for Senator is stray vote.
C-6, admitted—The initials appearing on line 5 for Senators are not marks.
C-7, admitted—That the protestee was voted for Senator does not invalidate the ballot.
C-10, admitted—The figure “O” on lines 5, 8, 9, and 10, indicate the desire of the voter to desist from voting.
C-15, admitted—The period after protestee’s name does not identify the ballot.
C-16, admitted—The initials of the names “Roxas” and “Calo” do not mark the same.
C-21, admitted—prepared only by one hand.
C-25, admitted—prepared only by one hand.
C-26, admitted—prepared only by one hand.
C-27, admitted—prepared only by one hand.
C-29, admitted—prepared only by one hand.
C-30, admitted—prepared only by one hand.
C-33, admitted—That “Ramon Diokno” was written in full and the rest of the candidates in initials only does not identify the ballot.
O-1, rejected—Ochoa voted for Vice-President.
O-2, rejected—E. Ochoa voted for Vice-President.

O-3, rejected—E. Ochoa voted for Vice-President.
O-4, rejected—Ochoa voted for Vice-President.
O-5, rejected—Ochoa voted for Vice-President.
O-6, rejected—Ochoa voted for Senator, line 13, reversed.
O-7, rejected—“Otsua” voted for Senator, line 13, reversed.
O-8, rejected—Ochoa voted for Senator, line 3.
O-9, O-10, O-11, O-12, admitted—voters for persons who were not candidates for Senators are stray votes.
O-13, admitted—That the names “garcia” and “insua” begin in small letters do not mark the same.
O-14, to O-24, admitted—blank spaces on the same do not mark the ballots.
O-25, admitted—“Garcia” opposite the word “Senators” does not invalidate the same.
O-26, admitted—The alleged identifying word is a vote for Garcia.
O-27, O-28, O-29, O-30, admitted—Alleged erasures are due to the desire of the voters to correct their votes.
O-31, admitted—prepared only by one hand.

Precinct No. 24—Cabadbaran

C-1, rejected—“M. Cao” voted for Vice-President.
C-2, rejected—Marcos Calo voted for Vice-President.
C-3, rejected—Calo voted for Vice-President.
C-4, rejected—M. Calo voted for Vice-President.
C-5, rejected—M. M. Calo voted for Senator, line 3.
C-6, rejected—M. Calo voted for Senator, line 3.
C-7, rejected—M. Calo voted for Senator, line 13, reversed.
C-8, rejected—Calo voted for Senator, line 14, reversed.
C-9, admitted—votes for persons who were not candidates are stray votes.
C-10, admitted—What appears on line 1 for Senator is evidently for Garcia.
C-11, admitted—What is written herein is “M. Calo.”
C-12, admitted—What is written herein “M. Calno”, sufficient and close to “Calo.”
C-17, admitted—alleged mark is accidental.
C-18, admitted—prepared only by one hand.
C-27, admitted—period after the name “Roxas” does not mark the ballot.
C-28, admitted—same reason as C-27.
C-33, admitted—Votes for persons not candidates for Senators are stray votes.
C-35, admitted—prepared only by one hand.
O-1, rejected—E. Ochoa voted for Vice-President.
O-2, rejected—“Don Ochoa” voted for Vice-President.
O-3, rejected—“Ocshua” voted for Vice-President.
O-4, rejected—“Archoa” voted for Vice-President.
O-5, rejected—Ochoa voted for Vice-President.
O-6, rejected—Ochoa voted for Senator, line 4.

O-7, admitted—votes for persons not candidates for Senators are stray votes.

O-8, admitted—same reason as O-7.

O-9, admitted—alleged mark is due to the ignorance of the voter.

O-10, admitted—“gable” after “Tomas” was evidently for Cabili, and “Sula” after “Vicente” was for Sotto.

O-11 to O-17, admitted—Blank spaces on the same do not invalidate the ballots.

O-18, admitted—not well written, but the word “Otaha” is idem sonans—can be read.

O-19, rejected The name “Acho” is opposite the word “Vice-Presidente”.

O-20, admitted—What is written therein is “Ostsawa”, idem sonans of Ochoa.

O-21, O-22, admitted—“Allabas” and “Allavas” written therein are meant for Altavas.

Precinct No. 1—Jabonga

C-1, rejected—“M. M” voted for Representative (Rule 15, Sec. 144, Act 357).

C-2, admitted—The name of Calo appears on line 3 for Senators but is preceded by the word “representante” (Confesor vs. Lutero).

C-3, rejected—Calo voted for Vice-President.

C-4, rejected—Calo voted for Senator, line 3.

C-5, rejected—Calo voted for Senator, line 3.

C-6, rejected—M. M. Calo voted for Senator, line 12, reversed.

C-27 to C-29, admitted—The fact that these ballots were written partly in indelible pencil and partly in lead does not nullify the ballots. (Rule 10, Sec. 144, Act 357.)

C-35, admitted—The alleged cross is apparently the initial of contestee.

O-1, rejected—Ochoa voted for President.

O-2, rejected—Ochoa voted for Senator, line 3.

O-3, rejected—Ochoa voted for Senator, line 3.

O-4, rejected—The name written for Representative is illegible.

O-5, admitted—Although poorly written, it can be seen what appears there is “Ochoa.”

O-6, admitted—What is written therein is “Ochao.” idem sonans of Ochoa.

O-7, admitted—What appears therein is “octoa,” idem sonans of Ochoa.

O-8, admitted—“Endrico Mongaya,” voted for Senator, is stray vote.

O-9, admitted—same reason as O-8.

O-10, admitted—What is written on line 7 for Senators is surplusage.

O-11, admitted—“Entong” after the name “Cabili” on line 5 for Senators does not mark the ballot.

O-12, admitted—"violen" on line 13 does not mark the ballot.

O-13, admitted—"Tenor" on line 11 for Senators does not mark the ballot.

O-14, admitted—"Aitaaas" on line 10 for Senators is evidently for Altavas.

O-15, admitted—"Manoy" on line 13 for Senators, is stray vote.

O-16, admitted—"AllavaS" on line 14 for Senators, is stray vote.

O-16, admitted—"Allavas" on line 14 for Senators, evidently was for Altavas.

O-17, admitted—"Alabas" for Senator is evidently for Altavas.

O-18, admitted—"allavas" on line 15 for Senators, is for Altavas.

O-19, admitted—"Alavas" for Senator is meant for Altavas.

O-20, admitted—"Allavas" on line 12 for Senators, is meant for Altavas.

O-21, admitted—same reason as O-20.

O-22, admitted—The elector, may be, was mistaken in combining the names of Calos Garcia and Tomas Cabili.

O-23, admitted—The blank space for Senators do not mark the ballot.

Precinct No. 2—Jabonga

C-1, admitted—Although the name "M. Calo" appears on line 3 for Senators, yet it is preceded by the word "Representante," like the following: President, M. Roxas; Vice-Presidente, Quirino.

C-2, admitted—The elector is evidently illiterate but what appears therein may be read "M. M. Calo."

C-3, admitted—"Favian Dejolde," voted for Senators, line 15, is stray vote.

C-4, admitted—"Alo Gracia," voted for Senator, line 6, is stray vote.

C-5, admitted—"L. Ramon," voted for Senator, line 4, is stray vote.

C-6, admitted—"Anang," voted for Senator, line 10, is stray vote.

C-7, admitted—The letter "M" on line 15 for Senators does not identify the same. The voter started to write the name, but desisted.

C-8, admitted—"Elisa" on line 4 for Senators, is stray vote.

O-1, rejected—Ochoa voted for Senator, line 3.

O-2, admitted—Although Ochoa is voted for Senator, line 2, yet her name is preceded by the word "Representante."

O-3, rejected—Ochoa voted for Senator, line 3.

O-4, rejected—Ochoa voted for Senator, line 3.

O-5, rejected—What is written in the space for Representative is wholly illegible.

O-6, rejected—same reason as O-5.

O-7, admitted—what is written in the space for Representative is “Ochao,” idem sonans of Ochoa.

O-8, admitted—what is written in the space for Representative is “Oclona,” showing the intention of the voter for Ochoa.

O-9, admitted—The person voted here is “Osowa,” idem sonans of Ochoa.

O-10, admitted—The vote for Senator, line 8, is stray vote.

O-11, admitted—Person voted for Senator, line 16, is stray vote.

O-12, admitted—“Aranita monica,” voted for Senator, line 16, is stray vote.

O-13, admitted—“Caboyay Section” on line 12 for Senators, does not identify the same.

O-14, admitted—name voted for on line 16 for Senators is stray vote.

O-15, admitted—vote on line 13 for Senators, is stray vote.

O-16, admitted—Vote on line 6 for Senators, is stray vote.

O-17, admitted—Vote for Senator, line 1, is stray vote.

O-18, admitted—“Aliavas” on line 15 for Senators is Altavas.

O-19, admitted—for the same reason as O-18.

O-20, admitted—lines on the spaces for Senators indicate voter’s intention not to vote for the same.

O-21, admitted—“Arata” for Senator, line 6, was evidently for Araneta.

O-22, admitted—“Atravas” voted for Senator, line 12, is for Altavas.

O-23, admitted—spaces in lines for Senators do not mark the ballot.

O-24, O-25, O-26, admitted—erasures were due to the desire of the voters to correct their votes.

Precinct No. 4-Jabonga

C-1, admitted—The name of Calo is just below the line for Representative and opposite the word “Representante”.

C-2, admitted—The name voted on line 1 for Senators is stray vote.

C-3, admitted—The elector, evidently ignorant, continued himself with the writing of initials for candidates for Senators from line 6 to 16.

C-15, admitted—“M. Calos”, voted for Vice-President, is stray vote.

C-16, admitted—Ochoa’s vote for Senator is stray vote.

O-1, rejected—The name appearing on the space for Representative is wholly illegible.

O-2, admitted—It is poorly written but we can read therein the name “Aliza” (Rule 1, section 144, Act 357).

O-3, admitted—The name is poorly written but it can be read as Ochoa.

O-4, admitted—The name is “E. Ocha.”

O-5, admitted—The vote for Senator on line 1 is stray vote.

O-6, admitted—The vote on line 1 for Senators is stray vote.

O-7, admitted—The vote for Senator on line 1, is stray vote.

O-8, admitted—“Gonfesor”, line 1 for Senator is for Confesor.

O-9, admitted—vote for Senator, line 16, is stray vote.

O-10, admitted—vote for Senator, line 16, is a stray vote.

O-11, admitted—The flourishes on line 16 do not identify the same.

O-12, admitted—“Alavas” on line 6 for Senators is for Altavas.

O-13, admitted—“Allabas” on line 6 for Senators is for Altavas.

O-14 to O-18, admitted—for the same reason as O-13.

Precinct No. 7-Jabonga

C-1, rejected—Marcos Calo voted for Senator, line 1.

C-2, admitted—Votes for Senators on lines 14 and 15 are stray votes.

C-1, admitted—Vote for Senator, line 2, is stray vote.

C-4, admitted—The voter, evidently, knows hardly to write, but the vote for Calo is clear.

C-5, rejected—“Sollo,” voted for Representative.

C-6, admitted—“N galo,” voted for Representative, is idem sonans of Calo.

C-7, admitted—The fact that this ballot is prepared partly in ink and partly in indelible pencil does not invalidate the same (Rule 10, section 144, Act 357).

C-13, admitted—M. Calo’s vote for Vice-President is stray vote.

C-14, admitted—Moncado’s vote for Senator is stray vote.

C-21, admitted—the traces of the letters are due to the ignorance of the voter.

C-22, admitted—for the same reason as C-21.

O-1, rejected—E. Ochoa is voted for Senator, line 2.

O-2, rejected—Ochoa voted for Senator, line 1.

O-3, admitted—hand-printing the first three names of the ballot does not identify the same.

O-4, admitted—The name “Eliza” is clearly written, although the family name may be spelled “Ochoa.”

O-5, admitted—Vote for Senator, line 8, is stray vote.
 O-6, admitted—Votes for Senator, lines 2 and 6, are stray votes.
 O-7, admitted—Vote for Senator, line 4, is stray vote.
 O-8, admitted—Vote for Senator, line 15, is stray vote.
 O-9, admitted—“Alavas” on line 10 is evidently for Alatas.
 O-10, admitted—“Pandalon”, voted for Senator, must have been for Pendatun.

Precinct No. 8-Jabonga

C-1, admitted—vote for Senator, line 15, is a stray vote.
 C-2, admitted vote for Senator, line 7, is a stray vote.
 C-3, admitted—vote for Senator, line 7, is a stray vote.
 C-14, admitted—The period after the name “R. Torres” does not mark the ballot.
 O-1, rejected—Ochoa voted for Senator, line 3.
 O-2, rejected—Ochoa voted for Senator, line 13, reversed.
 O-3, rejected—Ochoa voted for Senator, line 13, reversed.
 O-4, admitted—What is written therein is “Ocra” or “Occa”, idem sonans of Ochoa.
 O-5, admitted—person voted for is “Acha,” idem sonans of Ochoa.
 O-6, admitted—person voted for is “Ochia,” idem sonans of Ochoa.
 O-7, admitted—person voted for is “Ohwa,” idem sonans of Ochoa.
 O-8, admitted—The alleged thumbmarks on line 14 and 15 are accidental.
 O-9, admitted—spaces in the blank for Senators do not mark the ballot.
 O-10, admitted—prepared only by one hand.

Precinct No. 1-Nasipit

C-1, rejected—The name of Marcos Calo, not preceded by the title of the office, appears on the back of the ballot.
 C-2, rejected—M. Calo voted for Senator, line 2.
 C-3, rejected—M. Calo voted for Senator, line 1.
 C-4, rejected—M. Calo voted for Senator, line 3.
 C-5, rejected—M. Calo voted for Vice-President.
 C-6, rejected—Calo voted for Vice-President.
 C-7, rejected—Marcos Calo voted for Senator, line 1.
 C-8, rejected—Marcos M. Calo voted for Senator, Line 3.
 C-9, rejected—Carlos Garcia voted for Representative, while the name of Marcos Calo appears opposite the word “Senator”.
 C-10, rejected—M. M. Calo voted for Vice-President.
 C-11, rejected—M. M. Calo voted for Senator, line 1.
 C-12, admitted—hardly legible but the intention of the voter to vote M. M. Calo is very evident.

C-13, rejected—"F. Colo", voted for Senator, line 12.
C-14, rejected—Marcos Calo appears on the back of the ballot, not preceded by the title of the office.
C-15, rejected—M. M. Calo voted for Senator, line 2.
C-16, rejected—"C. Garcia" voted for Representative and M. Calo for Senator, line 1.
O-1, rejected—Ochoa voted for Senator, line 3.
O-2, admitted—The person voted for is "Ochua."
O-3, admitted—The erasures on the face of the ballot were due to correction made by the voter.
O-4, rejected—Ochoa voted for Senator, line 3.
O-5, admitted—The person voted for is "Ochou," idem sonans of Ochoa.
O-6, admitted—hardly legible but clearly for Ochoa.
O-7, admitted—The person voted for is "E. Otsowa," idem sonans.
O-8, admitted—prepared only by one hand.
O-9, admitted—The person voted for is "Eliza otsowa".
O-10, rejected—space for Representative is blank.
O-11, rejected—Ochoa voted for Senator, line 3.
O-12, rejected—Ochoa voted for Senator, line 16.
O-13, rejected—"Eliza Ochoa" voted for Vice-President.
O-14, rejected—E. R. Ochoa voted for Senator, line 1.
O-15, rejected—Ochoa voted for Senator, line 3.
O-16, rejected—Ochoa voted for Senator, line 3.
O-17, admitted—person voted for is "Octcha", idem sonans of Ochoa.
O-18, admitted—person voted for is "Oceoa," idem sonans of Ochoa.
O-19, rejected—Eliza Ochoa voted for Senator, line 3.
O-20, admitted—What is written in the space for Representative is "Eliza Ochao."
O-21, rejected—Garcia voted for Representative and Eliza Ochoa voted for Vice-President.
O-22, admitted—person voted for is "E. Ochowa."
O-23, admitted—What is written therein is "E. Ochaa."
O-24, rejected—Eliza Ochoa appears far below the line for Representative and "Eulogio Rodriguez" is voted for Representative.
O-25, admitted—period after the protestant's name does not identify the ballot.

Precinct No. 2-Nasipit

C-1, rejected—M. Calo voted for Senator, line 1.
C-2, rejected—M. Calo voted for Senator, line 1.
C-3, rejected—M. Calo voted for Senator, line 3.
C-4, rejected—M. Calo voted for Vice-President.
C-5, rejected—Marcos Calo voted for Senator, line 3.
C-6, admitted—alleged stain is accidental.
C-7, to C-9, admitted—for the same reason as O-6.

C-10, admitted—Vote for Senator on line 5 is stray.

C-18, admitted—The last letter is apparently the letter “v” but it may be also be an “o”.

C-20, admitted—period after the name of Calo does not identify the same.

C-21, admitted—The dots after the initial “M” do not mark the same.

C-22, admitted—alleged stain is accidental.

C-23, admitted—comma after protestee’s name does not identify the same.

C-24, rejected—The superfluous word appearing therein are immaterial and are considered marks for identification.

C-25, admitted—trace of thumbmark is accidental.

C-26, admitted—not well written but the family name appears to be Calo.

C-27, C-28, admitted—stains are accidental.

C-29, admitted—The voter is evidently ignorant. What he wrote on line 9 for Senators is an incomplete name.

C-30, admitted—punctuation after the name of Calo does not mark the same.

C-31, rejected—M. Calo voted for Vice-President.

C-32, rejected—M. Calo voted for Senator, line 3.

C-33, admitted—voted for Senator, line 4, is stray vote.

C-35, rejected—the person put herein in “Carlos Calo,” that person is entirely distinct from Respondent and therefore must be rejected.

C-36, admitted—voter wrote on rough surface.

C-37, admitted—prepared only by one hand.

C-38, admitted—“Macoy Calo” does not mark the same.
(Rule 9, section 144, Act 357.)

O-1, rejected—Ochoa voted for Senator, line 3.

O-2, admitted—the letter above the name “roreguez” is due to the ignorance of the voter.

O-3, admitted—The name appearing therein is “Elesa Ochaa.”

O-4, admitted—The name appearing therein is “Achoa.”

O-5, admitted—The name therein, not well written, is Eliza Ochoa.

O-6, rejected—The words “Butuanon waly gargo” is superfluous and therefore considered marked.

O-7, admitted—The alleged mark is due to the ignorance of the voter.

O-8, rejected—Although the voter wrote “Ochoa” in the space for Representative, he erased the same and rewrote on line 3 for Senators.

O-9, admitted—prepared by an ignorant voter.

O-10, admitted—The name is for Ochoa.

O-11, admitted—What is written is “Ahoa”, idem sonans of Ochoa.

O-12, admitted—The votes appearing on lines 10.
O-13, admitted—alleged stains are accidental.
O-14, rejected—Ochoa voted for Senator, line 2.
O-15, admitted—stain is accidental.
O-16, admitted—The person voted for is “Ochao”.
O-17, admitted—person voted for is “Elisa Ohua”.

Precinct No. 3-Nasipit

C-1, rejected—Marcos Calo voted for Senator, line 1.
C-2, rejected—M. Calo voted for Vice-President.
C-3, rejected—M. Calo voted for Senator, line 2.
C-4, rejected—“M. Callo” voted for Vice-President.
C-5, rejected—M. Calo voted for Vice-President.
C-6, rejected—“Calo M” voted for Vice-President.
C-7, rejected—M. Calo voted for Vice-President.
C-8, rejected—M. M. Calo voted for Vice-President.
C-9, C-10, rejected—M. Calo voted for Vice-President.
C-11, rejected—“Macos Kalo” voted for Vice-President.
C-12, rejected—M. M. Calo voted for Vice-President.
C-13, admitted—What is written therein is clearly for
M. Calo.
C-14, rejected—M. M. Calo appears on line 14 for Sena-
tors, reversed.
C-15, admitted—prepared only by one hand.
C-16, admitted—Although the given name read as “Man-
cos,” the family name is clearly “Calo.”
C-17, admitted—vote for Senator, line 1, is stray vote.
C-19, admitted—The dots preceding the name “Roxas” are
not marks.
C-20, admitted—The heavy lines are corrections made by
the voter.
C-20-A, admitted—The votes for Senators, line 1 and 2,
are stray votes.
C-21, admitted—This was prepared by an illiterate voter
and the alleged number “3” is a start to write the
letter “M.”
C-22, admitted—voter for Senator, line 6, is stray vote.
C-23, admitted—The dots do not identify the ballot.
C-24, C-25, admitted—same reason as C-23.
C-26 to C-30, admitted—same reason as above.
C-31, admitted—prepared only by one hand.
C-32, admitted—The voter wrote mechanically.
C-33-A, C-33-B, admitted—These ballots were prepared
by two different persons.
C-34-A, C-34-B, admitted—These ballots were prepared
by different persons.
O-1, admitted—The fact that there is a wide margin
on the space for Senators does not mark the same.
O-2, admitted—person voted for is “E. Oschoa”, idem
sonans of E. Ochoa.
O-3, admitted—The name “E. Ochoa” is clearly written.

O-4, admitted—What appears therein is “Ocha”.
O-5, admitted—The fact that only one person was voted for Senator does not mark the same.
O-6, admitted—There are no identifying marks.
O-7, admitted—The fact that the letter “H” in the family name “Ochoa” was capitalized does not mark the same.
O-8, admitted—The vote is for “Eliza Ohoa”.
O-9, admitted—not marked.
O-10, admitted—poorly written but it is still for Ochoa.
O-11, rejected—“Ohua” voted for Vice-President.
O-12, rejected—Ochoa is voted for Senator, line 13, reversed.
O-13, rejected—Eliza Ochoa voted for Vice-President.
O-14, rejected—“Ochoo” is voted for Senator, line 2.
O-15, admitted—E. Ochoa was written above the line for Representative.

Precinct No. 4-Nasipit

C-1, rejected—Calo voted for President.
C-2, rejected—Calo voted for Vice-President.
C-3, rejected—M. Calo voted for Vice-President.
C-4, rejected—M. Calo voted for Vice-President.
C-5, rejected—M. Calo voted for Vice-President.
C-6, rejected—“Calo” appears in the space for President.
C-7, rejected—M. M. Calo voted for Vice-President.
C-8, rejected—M. M. Calo voted for Senator, line 3.
C-9, rejected—M. Calo voted for Senator, line 3.
C-10, rejected—Marcos M. Calo voted for Senator, line 2.
C-11, rejected—M. M. Calo voted for Senator, line 3.
C-12, rejected—Marcos Calo voted for Senator, line 2.
C-13, rejected—M. M. Calo voted for Senator, line 12, reversed.
C-14, rejected—protestee’s name has been crossed out and rewritten on line 3 for Senators.
C-15 to C-17, admitted—each ballot prepared only by one hand.
C-18, admitted—What is written in the space for Representative is “Marcues Calu.”
C-19, rejected—The name voted for is “Manuel Calo.”
C-20, admitted—The check marks on the space for Senators indicate the desire of the voter not to vote for “Senators.”
C-28, admitted—The vote for Senator, line 3, is stray vote.
C-30, admitted—The period after the name of Calo does not mark the same.
C-31, C-32, C-33, C-34, and C-35, admitted—The periods after the name “Calo” do not mark the same.
O-1, rejected—Ochoa voted for Vice-President.
O-2, admitted—prepared only by one hand.

O-3, rejected—it cannot be determined whether the word is for Ochoa or Calo.

O-4, admitted—The voter wrote “Manuel” before “Osmeña”, but realizing his mistake, he crossed it out, and he put “Sergio.”

O-5, admitted—The person voted for is Ochoa.

O-6, admitted—The name written is Ochoa.

O-7, admitted—The name written is “Elesa R. Ochaa.”

O-8, admitted—The person voted for is “Otsoa.”

O-9, admitted—Carlos P. Garcia’s name appears opposite the word “Senators.”

O-10, admitted—The ballot is not marked.

O-11, admitted—The fact that Garcia’s name appears opposite the word “Senators” does not mark the same.

O-12, admitted—prepared only by one hand.

Precinct No. 5-Nasipit

C-1, rejected—Marcos Calo is voted for Vice-President.

C-2, rejected—Marcos Calo is voted for Vice-President.

C-3, rejected—M. Calo is voted for Vice-President.

C-4, rejected—Cacoy Calo is voted for Vice-President.

C-5, admitted—Period after Calo does not mark the ballot.

C-9, admitted—The name “Marcos” on line for President was crossed out was due to the correction by the voter and was not identify the ballot.

C-10, valid—the name appearing herein is “Marking Calo,” “Marking” is a diminutive of “Marcos” and therefore valid.

C-12, admitted—Period after the names of senators do not mark the ballot.

C-13, admitted—periods after the names of senators do not mark the ballot.

C-17, admitted—Prepared by one hand.

C-19, admitted—Stain is accidental.

C-20, admitted—the person voted is M. M. Calo.

C-21, admitted—Not clearly written, but the person voted for is M. M. Calo.

C-22, admitted—Prepared by one hand.

O-1, rejected—Elisa Ochuwa is voted for Senator, line 2.

O-2, rejected—Elisa is voted for Vice-President.

O-3, rejected—Elisa Ochoa is voted for Senator, line 1.

O-4, admitted—Ballot is written by only one hand.

O-5, rejected—Ochoa is voted for Senator, line 3.

O-6, admitted—Vote on line 5 for Senator is stray vote.

O-7, admitted—Prepared by one hand.

O-8, admitted—The person voted for is Ochoa, idem sonans.

O-9, admitted—The fact that the ballot was written mechanically does not mark the ballot.

O-10, admitted—the person voted for is Ochoa.
O-11, admitted—The person voted for is “Ashoa”, idem sonans of Ochoa.
O-12, admitted—The person voted for is “Ochoa”, idem sonans of Ochoa.

Precinct No. 6

C-1, rejected—M. Calo is voted for President.
C-2, rejected—M. Calo is voted for Vice-President.
C-3, rejected—M. Calo is voted for Vice-President.
C-4, rejected—M. Calo is voted for Vice-President.
C-5, rejected—M. M. Calo is voted for Vice-President.
C-6, rejected—M. M. Calo is voted for Vice-President.
C-7, rejected—M. Calo is voted for Senator, line 3.
C-8, rejected—M. Calo is voted for Senator, line 1.
C-9, admitted—Written by only one hand.
C-12, admitted—The vote for Senator on line 5 is stray vote.
C-13, admitted—The parenthesis in the name of “Jose Claren” does not mark the ballot.
C-15, admitted—The period after the name of the testee does not mark the ballot.
C-23, admitted—The period after “Cuenco” does not mark the ballot.
C-29, admitted—The period after “Calo” does not mark the ballot.
C-30, admitted—The crossing out of “V. Sotto” on line for Representative and substituting “Calo” therefore does not mark it.
C-31, admitted—The crossing out of the name of M. Calo on the line for Vice-President and rewriting it for Representative does not mark it.
O-1, rejected—Elisa Ochoa is voted for Vice-President.
O-2, rejected—“Olsowa” is voted for Vice-President.
O-3, rejected—“Othoa” is voted for Vice-President.
O-4, rejected—“E. Atchao” is voted for Vice-President.
O-5, admitted—Ditto marks on spaces for senators do not mark the ballot.
*O-6, admitted—The person voted for is “Ocroha”, idem sonans of Ochoa.
O-7, admitted—Written by only one hand.
O-8, admitted—the person voted for Representative is Elisa Ochoa.
O-9, admitted—The person voted for representative is Elisa R. Ochoa.

Precinct No. 7—Naisipit

C-1, rejected—Marcos Calo is voted for President.
C-2, rejected—Marcos M. Calo is voted for Senator, line 1.
C-3, rejected—Marcos Calo is voted for senator, line 1.

C-4, rejected—Marcos M. Calo is voted for senator, line 2.

C-5, rejected—Marcos M. Calo is voted for senator, line 3.

C-6, rejected—Marcos M. Calo is voted for senator, line 13, reversed.

C-7, rejected—M. M. Calos is voted for senator, line 13, reversed.

C-8, rejected—The person voted for representative is “Marcos Garcia.”

C-9, rejected—The words “Champion American Child” appearing on line 9 for Senators serve to identify the same.

C-10, admitted—Vote for senator on line 7 is stray vote.

C-15, admitted—Period after the name of the protestee does not mark the same.

C-16, admitted—Same reason as C-15.

C-17, admitted—Same reason as C-15.

C-18, admitted—Periods after Roxas and Calo do not mark the same.

C-19, admitted—Periods after the initials do not mark the ballot.

C-21, admitted—Written by only one hand.

C-22, admitted—Written by only one hand.

C-23, admitted—Written by only one hand.

C-24, admitted—Written by only one hand.

C-25, admitted—Written by only one hand.

C-28, admitted—Names of persons voted for Senators who are not candidates are stray votes.

C-29, admitted—Vote for Senator, line 6, is stray vote.

C-30, admitted—Votes for senators, line 5 and 6, are stray votes.

C-31, admitted—Vote for senator, line 16, stray vote.

C-32, admitted—Vote for senator is stray vote.

C-34, admitted—The person voted for is “M. Calao,” idem sonans of Calo.

O-1, rejected—“Ochise” is voted for Vice-President.

O-2, rejected—Ochoa is voted for senator, opposite the word “senator.”

O-3, admitted—The person voted for is Elisa, Rule 1, Section 144, Commonwealth Act 357.

O-4, rejected—Elisa R. Ochoa is voted for senator, line 1.

O-5, admitted—The person voted for is Ochoa.

O-6, admitted—Heavy writing of initial “R” does not mark the ballot.

MUNICIPALITY OF TALACOGON

Precinct No. 1

C-1, C-2, and C-3, admitted—votes for person not candidates for senators are stray votes.

C-16, and C-17, admitted—Both ballots were written by indelible pencil.

C-18, admitted—Period after “Calo” does not mark the ballot.

C-19, admitted—Same reason as C-18.

C-20, admitted—same reason as C-18.

O-1, rejected—E. R. Ocha is voted for Senator, line 3.

O-2, rejected—On the left margin of this ballot was written downward the word “Macnico Curato” which serves to identify the ballot and therefore must be rejected.

O-3, admitted—Figure 7 on line 2 for senator does not alter the vote for Elisa Ochoa.

O-4, admitted—Figure 16 and the name “garcia” do not alter the valid vote for Ochoa.

O-5, admitted—Vote for senator is stray vote.

O-6, admitted—The fact that Ochoa is voted for Vice-President does not invalidate here the vote for representative.

O-7, admitted—Vote for Ochoa is stray vote.

O-8, admitted—Vote for “aquilino” for senator is stray vote.

O-9, admitted—Vote for M. Calo for President is stray vote.

O-10, admitted—Vote for Sergio for Vice-President is stray vote.

O-11, admitted—Voter is ignorant. What appeared on line 16 is due to his ignorance.

O-12, admitted—Vote for “Oling” for senator is stray vote.

O-13, O-14, and O-15, admitted—The fact that senatorial candidates were voted just opposite the word “Senators” does not mark the ballot.

O-16 and O-17, admitted—The dots are not in different pencils from the rest of the ballot.

O-18, admitted—Written by only one hand.

O-19, admitted—Written by only one hand.

O-20, admitted—All names in this ballot were written by the same pencil.

O-21, admitted—Written by only one hand.

MUNICIPALITY OF TALACOGON

Precinct No. 2

C-1, C-2, C-3, C-4, C-5 and C-7, admitted—Votes for persons not candidates for Senators in these ballots are stray votes.

C-6, rejected—The words “sa relip” appearing on line 3 for Senators serve to identify the same.

C-21, admitted—Votes for persons not candidates for Senators in this ballot are stray votes.

C-25, admitted—period after the name “Roxas” does not make the ballot marked.

C-26, admitted—punctuation on the ballot does not mark the same.

C-27, admitted—Same reason as above.

C-28, admitted—Same reason as above.

C-30, admitted—Written by only one hand.

C-33, rejected—everything in this ballot is unintelligible.

O-1, rejected—Elisa Ochoa voted for Vice-President.

O-2, rejected—“Olisa” voted for Senator, opposite the word “Senators.”

O-3, admitted—although poorly written, “Ockoua” is legible—idem sonans with Ochoa.

O-4 to O-20, admitted—Votes for persons not candidates for Senators are stray votes.

O-21 to O-28, admitted—“Love” voted for Senator in these ballots apparently refers to Lava.

O-29 and O-30, admitted—crossing out of words are due to the desire of the voter to correct his vote.

O-31, admitted—vote for “Ochoc”, idem sonans with Ochoa.

O-32, admitted—the person voted for is “Elisa” under Rule 1, Sec. 144, Commonwealth Act No. 357.

O-33, admitted—written by only one hand.

Precinct No. 3

C-1, admitted—person voted is “M. Cado,” idem sonans with M. Calo.

C-2, admitted—written by only one hand.

C-3, and C-4, admitted—votes for persons not candidates for Senators are stray votes.

C-23, admitted—period after Calo does not make the ballot marked.

C-24, admitted—same reason as above.

C-25, admitted—same reason as above.

C-26, admitted—same reason as above.

C-27, admitted—same reason as above.

C-28, admitted—same reason as above.

C-29, admitted—same reason as above.

O-1 to O-12, admitted—figures appearing in these ballots do not identify the same.

O-13, admitted—vote for “Jose Viray” for Senator is stray vote.

O-14, admitted—vote for Mario Yu Buco for Senator is stray vote.

O-15, admitted—blank spaces on lines for Senators do not mark the ballot.

O-16, admitted—person voted for is “A. Ockoa”, idem sonans with Ochoa.

O-17, admitted—person voted for is “E. Ocha”, idem sonans with Ochoa.

GIBONG SUBPROVINCIAL DIVISION

Precinct No. 1 (Aspitia)

C-18, admitted—written by only one hand.
 O-1, rejected—Ochoa voted for Senator, line one.
 O-2, rejected—E. R. Ochoa voted for Senator, line 3.
 O-3, O-4, O-5, O-6, O-7, admitted—votes for persons not candidates for Senator, are stray votes.
 O-8, admitted—Crossing out of “J” was due to the desire of the voter to correct his vote.
 O-9, admitted—person voted for is “Oheo”, idem sonans with Ochoa.
 O-10, admitted—person voted for is “Ochas”, idem sonans with Ochoa.
 O-11, admitted—same reason as O-10.

Precinct No. 3 (Prosperidad)

C-1, rejected—M. Calo voted for Senator, line 3.
 C-2 to C-9, admitted—votes for persons not registered as candidates for senator are stray votes.
 C-15, admitted—vote for “Serio Osmeña” for Vice-President is stray vote.
 C-38, admitted—traces of stains are due to accidents.
 C-40, admitted—prepared by only one hand.
 C-48, admitted—alleged mark is not so.
 O-1, rejected—Ochoa voted for Senator, line 3.
 O-2 to O-10, admitted—votes for persons not registered candidates for senator are stray votes.
 O-11 to O-18, admitted—same reason as O-2 to O-10.
 O-19, to O-22, rejected—the vote for Representative are initials “E. O.” only, which is invalid under Rule 15, Sec. 144, of Commonwealth Act 357.
 O-23, admitted—the vote by initials for Senators does not invalidate the vote for E. Ochoa.
 O-24, admitted—same reason as O-23.
 O-25, admitted—letters “R. O.” between President and Vice-President were written by mistake by the voter but erased by him.
 O-26, admitted—written by only one hand.
 O-27, admitted—written by only one hand.

Precinct No. 5 (Borbon)

C-1, rejected—The vote is for “Lage Calio” which does not identify the Protestee sufficiently and therefore should be rejected.
 C-2, admitted—the vote is for “Calolo Marco”, idem sonans of Marcos Calo.
 C-3, rejected—This ballot must be rejected as marked.
 C-4, admitted—vote for Senator, line 1, is stray vote.
 C-5, admitted—vote for Senator, line 5 is stray vote.
 C-6, admitted—what is written on line 1 for Senators is “Lava” and not “Lara”.

C-10, admitted—the fact that Araneta was voted without initial, while the others were preceded by initials, does not make the ballot marked.

C-24, admitted—the person voted for is M. M. Calolo, idem sonans with M. Calo.

C-25, admitted—the person voted for is Marcos Calo.

C-28, admitted—the fact that Carlos P. Garcia was voted for Senator opposite the word “Senators”, does not make the ballot marked.

C-48, admitted—alleged stains are accidental.

O-1, rejected—Elisa Ochoa voted for Senator, line 3.

O-2, rejected—The vote here is “Filomena Cupa Ochoa” and therefore must be rejected.

O-3, rejected—The vote is for “Trining Ochoa” and not for Protestant.

O-4, rejected—The vote is for “Osin Ochoa” and therefore must be rejected.

O-5, rejected—The vote is for “Anding R. Ochoa” a person distinct from Protestant. It must be rejected.

O-6, admitted—person voted is “L. Ochoa”; mistaken initial does not invalidate the ballot. Rule 6, Sec. 144, Commonwealth Act 357.

O-7, admitted—same reason as O-6.

O-8, admitted—person voted for is “Elisa Insua Ochoa” this was due to mistake of the voter, but it is valid vote for Elisa Ochoa.

O-9, rejected—The person voted herein for representative is “Cabili Ochoa”. It must be rejected.

O-10, rejected—The person voted herein is “Altavas Ochoa”, and must be rejected for the same reason as above.

O-11, rejected—The vote is for “Romero Ochoa” and must be rejected for the same reasons as O-9 and O-10.

O-12, admitted—the person voted for is Ochoa.

O-13, admitted—the person voted for is Ochoa.

O-14, admitted—vote for Senator, line 1, is stray vote.

O-15, admitted—the fact that the names of the persons voted from President to Representative are hand-printed, while the rest are by handwriting by the same hand, does not invalidate the ballot.

Precinct No. 7 (Novele)

C-2, rejected—The person voted for is “Bococoy Calo” which is different from the name of Protestee.

C-3, admitted—vote for Vice-President is stray vote.

C-4, admitted—the person voted for is M. Colo, idem sonans with M. Calo.

C-5, admitted—the vote for Carlos Garcia for Vice-President is stray vote.

C-13, admitted—“Totoy Calo” is valid for Marcos Calo.

C-14, admitted—vote for “Marco” on line for Senators is stray vote.

C-25, admitted—punctuation after “Calo” does not make the ballot marked.

C-26, admitted—same reason as C-25.

O-1, admitted—votes for persons not registered candidates for Senators, are stray votes.

O-2, admitted—illegible, but the person voted for Representative is “Elisa Ocho”.

O-3, admitted—Eling Ochoa identifies the protestant.

O-4, admitted—person voted for is “Elisa”, under Rule 1, Sec. 144, Comm. Act No. 357.

O-5, admitted—vote for Roxas for Vice-President is stray vote.

O-6, admitted—the vote on line one for Senators is stray vote.

O-7, admitted—the vote on line one for Senator, is stray vote.

O-8, admitted—same reason as O-7.

O-9 to O-11, admitted—blanks in spaces for Senators are not marks.

O-12, admitted—the first three names are Christian names, with correct initials and surnames.

O-13, admitted—the vote for Marcos M. Calo in the space for Vice-President is stray vote.

O-14, admitted—written by only one hand.

O-15, admitted—written by only one hand.

Precinct No. 9 (Rosario)

C-1, admitted—votes for persons not registered candidates for Senators are stray votes.

C-5, admitted—the fact that Garcia and Magalona were written without initials, does not make the ballot marked.

C-6 to C-8, admitted—punctuations after names voted for are not marks.

O-1, rejected—Elisa Ochoa voted for President.

O-2, O-3 and O-4, admitted—votes for persons not registered candidates for Senators are stray votes.

O-5, admitted—alleged traces are accidental.

O-6, admitted—the vote is for “Elisa”, under Rule 1, Sec. 144, Comm. Act No. 357.

SIMULAONG SUB-PROVINCIAL DIVISION

Precinct No. 3—(Bunawan)

C-1, admitted—“M. Olo” voted for Representative, is idem sonans with M. Calo.

C-2, admitted—“M. Colo” voted for Representative is idem sonans with M. Calo.

C-3, admitted—“M. M. Cdlo” voted for Representative is idem sonans with M. Calo.

C-4, admitted—"M. Clao" voted for Representative is idem sonans with M. Calo.

C-6, admitted—vote for E. Ochoa for Vice-President is stray.

C-8, admitted—vote for "Alava" for Vice-President is stray.

C-12, admitted—vote for Senator, line one, is stray.

C-13, admitted—same reason as C-12.

C-14, admitted—vote for Senator, line one, is "Singsang".

C-15, admitted—vote for Senator, line 2, is stray.

C-16, admitted—vote for Senator, line 2, is stray.

C-17, admitted—the initial "C. C.", voted for Senator, does not mark the ballot.

C-18, admitted—"Arrange", evidently is for Arranz.

C-19, admitted—punctuation on the ballot does not mark the ballot.

O-1, rejected—Ochoa voted for Senator.

O-2, admitted—Ochoa's vote for Senator is stray.

O-3, admitted—the vote for Ochoa for President is stray.

O-4, admitted—written by only one hand.

O-5 to O-20, admitted—votes for persons not registered candidates for Senators are stray.

O-21, admitted—the fact that the voter wrote the title of the person voted does not mark the ballot.

O-22, admitted—flourishes are due to the corrections made.

Precinct No. 4—(Bunawan)

C-3, admitted—alleged marks are accidental.

C-4, admitted—person voted for is "M. M. Caco", idem sonans with M. Calo.

C-5, admitted—person voted for is "M. Caeo", idem sonans with M. Calo.

C-6, admitted—not well written, but the person voted for is M. Calo.

C-7 to C-24, admitted—votes for persons not registered candidates for Senators are stray votes.

C-42 and C-43, admitted—punctuations after names are not marks.

C-46, admitted—same reason as C-42.

O-1, rejected—Ochoa voted for Vice-President.

O-2, admitted—what is written on line 4 for Senators does not invalidate the vote for Ochoa.

O-3, to O-11, admitted—votes for persons not candidates for Senators are stray votes.

O-12, admitted—the fact that "Garcia" is written just opposite the word "Senator" does not mark the ballot.

O-13, admitted—the vote for "Otero" for Senator is stray.

O-14, admitted—flourishes are due to corrections made by the voter.

Precinct No. 5—Libertad

C-1, rejected—M. Calo voted for Senator, line 3.
C-2, rejected—M. M. Calo voted for Senator, line 3.
C-5, admitted—the person voted for is “M. Calio”, idem sonans with M. Calo.
C-6, admitted—the person voted for is “M. Cao”, idem sonans with M. Calo.
C-7, admitted—the person voted for is “M. M. Cala”, idem sonans with M. Calo.
C-8 to C-11, admitted—punctuations are not marks.
C-24, admitted—“M. Roxso” voted for President is for Roxas.
C-29, admitted—“Rod” in line for Vice-President is the beginning of Rodriguez.
C-35, admitted—votes for persons not candidates for Senators are stray votes.
O-1, rejected—Ochoa vote for Senator, line 3.
O-2, rejected—Ochoa voted for Senator, line one.
O-3, rejected—Ochoa voted for Senator, line 3.
O-4, rejected—Elisa R. Ochoa voted for Senator, line 3.
O-5, rejected—Ochoa voted for Senator, line 3.
O-6, rejected—Ochoa voted for Senator, line 3.
O-7, rejected—“Rodriguez” voted for Representative, and “Ochoa” appears on space for Senators.
O-8, rejected—illegible.
O-9, admitted—person voted thereon is “Ochag”, idem sonans with Ochoa.
O-10, admitted—person voted for is “Ochoo”, idem sonans with Ochoa.
O-11, admitted—same person as O-10.
O-12, admitted—person voted for is “Ocha”, idem sonans with Ochoa.
O-13, admitted—apparently written “Oehoa”, although the letter “e” may be read “c”.
O-14, person voted for is “Ochaa”, idem sonans with Ochoa.
O-15, admitted—person voted for is “Ochso”, idem sonans with Ochoa.
O-16, admitted—person voted for is “Ocha”, idem sonans with Ochoa.
O-17, admitted—person voted for is “Asohsa,” idem sonans with Ochoa.
O-18, admitted—person voted for is “Ochoa”, idem sonans with Ochoa.
O-19, admitted—same person as O-18.
O-20 to O-26, admitted—persons voted for Senators, not being registered candidates, are stray votes.
O-28, to O-34, admitted—blank spaces in lines for Senators do not make the ballots marked.
O-35, admitted—prepared by an illiterate voter. The line drawn across the ballot indicates the desire of the voter not to vote for Senators.

O-36, admitted—the cross-mark appearing on the line for Vice-President indicates the desire of the voter not to vote for this position.

O-37, rejected—"Ocha" voted just opposite the word "Vice-President".

O-38, admitted—the fact that Ochoa was also voted for Senator, does not make the ballot marked.

O-39, admitted—written by only one hand.

O-40, admitted—written by the same hand.

Precinct No. 12—Veruele

C-1, rejected—vote is only by initial "M. C."

C-2, admitted—written by only one hand.

C-3, admitted—ballot is not marked.

C-4, rejected—On the space for senator the following is written; "To all parties". This is an impertinence which makes the ballot marked.

C-5 to C-20, admitted—votes for persons not registered candidates for Senator are stray votes.

C-13, admitted—same reason as above.

C-14, to C-18, admitted—same reason as above.

C-22, admitted—same reason as above.

C-23, admitted—vote for Vice-President is stray vote.

C-24, admitted—same reason as C-23.

C-25 and C-26, admitted—votes for Vice-President are stray votes.

C-28, admitted—vote for Vice-President is stray.

C-34 and C-35, admitted—votes thereon identify the prottee.

O-1, rejected—Ochoa voted for Senator, line 3.

O-2, rejected—Ochoa voted for Senator, line 3.

O-3, rejected—Ochoa voted for Senator, line 3.

O-4, rejected—Ochoa voted for Senator, line 3.

O-5, rejected—Ochoa voted for Senator, line 3.

O-6, admitted—voted for Senator, line one, is stray.

O-7, admitted—same reason as O-6.

O-8, admitted—same reason as O-7.

O-9, admitted—same reason as above.

O-10, to O-23, admitted—initials thereon do not mark the ballots.

O-24, to O-36, admitted—votes for persons not registered candidates for Senators, are stray votes.

O-38 and O-39, admitted—written by only one hand.

UMAYAN SUB-PROVINCIAL DIVISION

Precinct No. 1—Loreto

C-1, admitted—person voted for is "M. Celio," idem sonans with M. Calo.

C-4 to C-10, admitted—votes for persons not candidates for Senators are stray votes.

O-1, rejected—Elisa Ochoa voted for Senator, line one.

O-2, admitted—person voted is "Ochae," idem sonans with Ochoa.

O-3, admitted—person voted is “Ohoa,” idem sonans with Ochoa.

O-4, rejected—vote by initials only “E. O.”, not valid under Rule 15, Sec. 144, Commonwealth Act 357.

O-5, admitted—vote for Senator, line 1, stray vote.

O-6, admitted—same reason as above.

O-7, admitted—votes for persons not registered candidates, are stray votes.

O-8, rejected—“I love you, do you love me? was written on this ballot which makes it marked.

O-9, to O-13, admitted—votes for persons not candidates for Senators, are stray votes.

O-14 to O-18, admitted—for the same reason stated above.

O-19 to O-29, admitted—same reason as above.

O-30, admitted—“Nanay” Ochoa is accepted as valid vote for Protestant.

O-31, admitted—letters appearing in line one for Senators are the beginning of a name which the voter did not continue.

O-32, admitted—same reason as O-31.

O-33, admitted—same reason as O-32.

O-34, admitted—what is written before the name “Confesor” does not mark the ballot.

O-35, admitted—the period after “Doctor” appearing on line one for Senators does not invalidate the ballot.

O-36, admitted—vote for Senator one line 2, is stray vote.

O-37, admitted—vote for “M. Roxas” for Vice-President, is stray vote.

Precinct No. 5 (La Paz)

C-1, admitted—person voted for is “N. Cla”, idem sonans of Calo.

C-2, admitted—person voted for is “M. Cale”, idem sonans of M. Calo.

C-3, rejected—person voted for is “Alise Cac”—stray vote.

C-4, admitted—“Carabao” voted for Vice-President is stray vote.

C-5, admitted—“Elo Caloyan” voted for vice-president, is stray vote.

C-6 to C-25, admitted—votes for persons not candidates for Senators, are stray votes.

C-26, admitted—Elisa Ochoa voted for Vice-President, is stray vote.

C-27 and C-28, admitted—prepared by two different persons.

C-29, admitted—mistaken given names of Sotto and Pendatun do not invalidate the ballot.

C-30, admitted—Calo voted for Vice-President and Senator, are stray vote.

C-31, to C-40, punctuations after name "Calo" do not mark the ballots—admitted.

C-57 to C-59, admitted—these ballots were apparently intended for Santo Tomas, Agusan, but were used in La Paz, as shown by the fact that "Santo Tomas" was crossed out, and above it was written "La Paz". Aside from that there is no evidence to show that these ballots were surreptitiously introduced in La Paz.

O-1 to O-23, admitted—votes for persons not candidates for Senators, are stray votes.

O-24, admitted—person voted for is "E. Ocloya", idem sonans with Ochoa.

O-25, admitted—person voted for is "Oceoa", close enough to Ochoa.

O-26, admitted—person voted for is "Ocha" close enough to Ochoa.

O-27, admitted—person voted for is "E. Choa", idem sonans with Ochoa.

O-28, rejected—vote by initials only, "E. R. O." is invalid.

O-29, admitted—letters appearing on spaces for Senators apparently are due to the ignorance of the voter.

O-30, admitted—although not well written, "Ochoa" is legible.

O-31, admitted—vote for Senator, line one, is stray vote.

O-32, admitted—vote for Senator, line 2, is stray vote.

O-33, admitted—the fact that only Lava was voted for Senator, does not make the ballot marked.

O-34, admitted—"Ochoa R" does not identify the ballot.

O-35, admitted—"Ochoc" is voted—idem sonans with Ochoa.

O-36, admitted—"Elisa Ochoa" is clearly legible.

Precinct No. 9 (Nueva Gracia)

C-1, rejected—"Calo Marcos" voted for Senator, line one.

C-2, admitted—vote for Senator, line one, stray vote.

C-3, admitted—votes for persons not candidates for Senators, are stray votes.

C-4, admitted—same reason as C-3.

O-1 to O-3, admitted—votes for persons not candidates for Senators, are stray votes.

O-4, admitted—voter made a mistake in writing "Altavas" for Senator.

O-5, rejected under Rule 11, Sec. 144, Commonwealth Act No. 357.

O-6, admitted—the fact that Ochoa was preceded by the word "Representative" does not make the ballot marked.

O-7, admitted—voter apparently started to vote for Vera on line 16 for Senators.

O-8, admitted—the voter only made a mistake in writing the first name of Ochoa.

O-9, admitted—"Elioa Ocloya" is idem sonans with Ochoa.
 O-10, admitted—person voted for is "Ocboa", idem sonans with Ochoa.

WAWA-OHOT SUB-PROVINCIAL DIVISION

Precinct No. 3 (Guadalupe)

C-1, admitted—votes for Persons not candidates for Senators, are stray votes.
 C-2, rejected—the vote is for "M. Cacoy".
 C-3, admitted—stain is accidental.
 C-4 and C-5, admitted—punctuations thereon do not make the ballots marked.
 O-1, rejected—"E. Ocha" voted for Senator, line 3.
 O-2, rejected—"O. Elise O", voted for Senator, line 3.
 O-3, admitted—"M. Calo voted for Vice-President, is stray vote.
 O-4, admitted—"M. Roxas" voted for Vice-President, is stray vote.
 O-5, admitted—not well written, but "Ocher" is legible idem sonans of Ochoa.
 O-6, admitted—"Ok." thereon does not invalidate the ballot.
 O-7, admitted—stains are accidental.
 O-8, admitted—blank spaces in the lines for Senators, do not invalidate the ballot.

From the above it appears that out of the ballots submitted for the revision of this Tribunal, Ochoa is found to have obtained 1,212 votes and Calo 746. Summing up with the total previously found we arrived at the following conclusions:

Ballots not involved in the protest as well as those admitted in the revision and against which objections were waived by the parties:

Elisa R. Ochoa	7,786
Marcos M. Calo	8,618

We must add what has been found in the revision of the ballots to be valid and arrive at the following results:

Elisa R. Ochoa	8,999
Marcos M. Calo	9,362

or a difference of 363 in favor of Calo.

Wherefore, the Tribunal declares the respondent, Marcos M. Calo, duly elected Representative of the lone district of Agusan, and condemns the protestant to pay the costs and expenses relative to this suit. So ordered.

Justices *Guillermo F. Pablo* (Chairman), *Cesar Bengzon*, and *Alex Reyes*, and Representative *Emigdio V. Nietes*, concur.

Representatives *Cipriano P. Primicias*, *Marcial O. Rañola*, and *Vicente Logarta*, concur in the result.

Protestee declared elected Representative.

DECISIONS OF THE COURT OF APPEALS

[No. 1128-R. May 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FLORENCIO FERNANDEZ, FLORENTINO QUINTOS, GERMAN M. PULGAR, JOSEPH SANTOS, and JOHN DOE, defendants; FLORENCIO FERNANDEZ, FLORENTINO QUINTOS, and GERMAN M. PULGAR, defendants and appellants.

1. LEASE OF GOVERNMENT PROPERTY; EJECTMENT OF LESSEE BEFORE EXPIRATION OF LEASE, IMPROPER WHERE LEASE WAS DULY EXECUTED BY PROPER AUTHORITIES; CASE AT BAR.—Pursuant to a resolution approved by the Provincial Board of Pangasinan on January 16, 1946, the Provincial Governor executed on May 1, 1946, in favor of the United States of America, a contract of lease covering several buildings, including the premises in question (the Sison Auditorium), for the period from January 10, 1945 to May 25, 1946. Hence, the Government of the United States had the right to use the auditorium and to dispose of such use from November 9 to November 11, 1945 and, its duly authorized representatives having specifically allowed the "Witnesses of Jehovah" to occupy the premises on said date, it is clear that the Provincial Governor had no authority to eject them therefrom, or to order them to vacate the premises, during said period, aside from the fact that the same have been leased to them by the Provincial Treasurer upon indorsement made by the very office of the Provincial Governor after consulting the proper school authorities.
2. CRIMINAL LAW; DISOBEDIENCE TO A PERSON IN AUTHORITY; MISTAKE OF FACT AS EXEMPTING CIRCUMSTANCE.—The appellants may have honestly believed that the verbal order to vacate the premises in question, issued by the Provincial Governor, had been superseded by the subsequent order, to the contrary of the Provost Marshall, addressed to Captain Sumulong, and by the latter's command to "go ahead, continue as you have heard from my boss." Even if such belief were erroneous, it would constitute a mistake of fact, which would suffice to exempt appellants from the criminal charge of *disobedience to a person in authority*, if they were legally bound to comply with said order of the Provincial Governor.
3. CONSTITUTIONAL LAW; PUBLIC PROPERTY, USE OF, FOR RELIGIOUS PURPOSES; WHERE RELIGIOUS CHARACTER OF USE OF PUBLIC PROPERTY IS INCIDENTAL, EFFECT; ARTICLE VI, SECTION 23 (3) CONSTITUTION OF THE PHILIPPINES.—Where the religious character of the "Witness of Jehovah" and their convention, as well as the holding thereof, are merely assumed or taken for granted, it is not clear that the Constitutional provision [Article VI, section 23 (3), Constitution of the Philippines] inhibits the use of public property for religious purposes, when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general upon payment of the corresponding fees. In the case at bar, the Province of Pangasinan allowed the "Witnesses of Jehovah" to use the premises, not because they presumably constituted a religious organization or intended to hold a convention allegedly of a religious nature, but in consideration of fees paid by said organization, as any other person or entity could have done so. (See: *Orden de Predicadores vs. Metro-*

politan Water District, 44 Phil., 292, 301-302; Aglipay *vs.* Ruiz 64, Phil., 201, 205-207, 208-210; Nichols *vs.* School Directors (1879) 93 Ill. 61, 34 Am. Rep. 160; School Directors *vs.* Toll (1909) 149 Ill. App. 541; Hurd *vs.* Walters (1874) 48 Ind. 148; Baggerly *vs.* Lee (1905) 37 Ind. App. 139, 73 N. E. 921; Townsend *vs.* Hagan (1872) 35 Iowa, 194; Davis *vs.* Boget (1878) 50 Iowa, 11; States ex rel. Gilbert *vs.* Dilley (1914) 95 Neb. 527, 50 L.R.A. (N. S.) 1182, 145 N. W. 999; Greenbanks *vs.* Boutwell (1870) 43 Vt. 207; Lagow *vs.* Hill (1909) 238 Ill. 428, 87 N. E. 369.)

4. MUNICIPAL CORPORATION; POWERS OF MUNICIPAL CORPORATION, DUAL IN NATURE; CASE AT BAR.—The powers exercised by municipal corporations are not all governmental in nature, for they perform dual functions, viz; public and private or corporate. If in the administration of its patrimonial properties a municipal corporation "is to be regarded as a private corporation or individual" and its municipal council "occupies, for most purposes, the position of a board or directors of a private corporation," then, in the administration of said properties, the provincial governor or the municipal mayor performs a role analogous to that of the manager or executive officer of a private corporation or enterprise. [Municipal Code (Act No. 82); Dillon on Municipal Corporation, 5th ed., sec. 1610; Menzoza *vs.* De Leon, 33 Phil., 508.] There is reason, therefore, to doubt that, in the discharge of his duties as such, he acts as a person in authority. Hence, it is doubtful whether the failure or refusal to comply with the order to vacate the premises in question, issued, without court proceeding, by the provincial Governor—which, if finally executed, would have constituted an illegal act, for which the Provincial Governor and the municipal government might be held responsible in damages—would constitute the crime of disobedience to a person in authority.

APPEAL from a judgment of the Court of First Instance of Pangasinan, Rodas, J.

The facts are stated in the opinion of the court.

Punzalan & Yabut and Jose B. Galang for appellants.
First Assistant Solicitor-General Gianzon and Solicitor Avanceña for appellee.

CONCEPCION, J.:

Florencio Fernandez, Florentino Quintos and German Pulgar, together with Joseph Santos and John Doe (who has not been apprehended), were charged in the Court of First Instance of Pangasinan with a violation of article 151 of the Revised Penal Code, in that, in the language of the information :

"* * * on or about the 9th day of November, 1945, in the municipality of Lingayen, Province of Pangasinan, Philippines, and within the jurisdiction of this Court, the above-named defendants, being then the person in charge of the Theocratic Convention, a religious sect known as Jehovah's Witnesses, conspiring together acting jointly and helping one another, did then and there, wilfully, unlawfully and feloniously, seriously disobey the lawful orders of the Provincial Governor of this province, Hon Sofronio C. Quiamson, when the latter, in the performance of his official duties and under the author-

ity granted him by law as Governor of this province ordered them to vacate and not to use the Sison Auditorium, a public building owned by the Province of Pangasinan, warning them further that if they do not vacate the premises of the said Sison Auditorium on the following day they received such order, the said Governor will be constrained to oust them by using the 18th Military Command then stationed in the municipality of Lingayen, but the said accused, in spite of the fact that they received and heard such order, and in open disregard and serious defiance of the same, did then and there willfully, unlawfully and feloniously, seriously disobey the aforesaid order by continuing to hold the convention of the Jehovah's Witnesses in said Sison Auditorium in spite of the orders so given."

It appears that defendants Fernandez, Quintos and Pulgar were member of the committee in charge of a convention of "Witnesses of Jehovah." On October 13, 1945, Fernandez wrote to "the Commanding General, Base M, U. S. Army, San Fernando, La Union, (Thru the Municipal Mayor, Lingayen, Pangasinan)" a letter (Exhibit 2-c) reading in part:

"In connection with the contemplated convention of the Witnesses of Jehovah of the Province of Pangasinan and the neighboring provinces, which will take place in Lingayen on November 9, 10 and 11, 1945, I have the honor to request that I be granted to use the cottages vacated by the 38th Bomb Group, United States Army, in Lingayen, Pangasinan, for the accommodation of its members during the said period."

The acting mayor forwarded this letter, with his favorable recommendation, to said army officer (Exhibit 2-B), who indorsed the matter to the Provost Marshal, with the statement that "authority has been granted for members attending a convention of Witnesses of Jehovah on 9-11, November, 1945, to occupy during that period cottages in Lingayen vacated by the 38th Bomb Group" (Exhibit 2-a). The Provost Marshall returned the correspondence thru the office of the mayor, which forwarded the same to Fernandez, "with the information that his request to use the cottages vacated by the 38th Bomb Group has been granted as per 2nd indorsement hereof" (Exhibit 2).

On October 15, 1945, Quintos wrote the following letter (Exhibit 5) :

"The Honorable Provincial Board,
Lingayen, Pangasinan.

"Gentlemen:

"We have the honor to request the honorable body for permission to use the Sison Auditorium at Lingayen, Pangasinan, for three-day convention of Jehovah's Witnesses on November 9, 10, and 11, 1945, respectively.

"If it is deemed necessary that said auditorium be rented, we hereby express our willingness to pay the rent if it cannot be granted to us free.

"The Convention Committee expresses its heart-felt gratitude in behalf of the thousands of peace-loving people of this country for any consideration the Honorable Body may grant on this request.

"We earnestly request and hope therefore that this petition of ours be given your kindest and immediate consideration, we beg to remain

"Very respectfully,

"CONVENTION COMMITTEE

"By:

"(Sgd.) FLORENTINO QUINTOS

"Secretary"

This letter was seemingly referred to the Division Superintendent of Schools who, in turn, endorsed it to the principal of the Pangasinan Provincial High School, for "information as to whether or not the Sison Auditorium will be used for school purposes during the period November 9-11, 1945" (Exhibit 5-a). On October 19, 1945, the teacher in charge of the provincial high schools, "with the information that the Pangasinan Provincial High School in Lingayen will not use the Sison Auditorium on the dates mentioned in the basic communication," (Exhibit 5-a). Hence, on October 20, 1945, the office of the Division Superintendent "transmitted" the matter "to the Provincial Treasurer, through the Provincial Governor," with the statement that:

"Since the high school will have no activities during the period November 9-11, 1945, when the convention of Jehovah's Witnesses will take place and *provided the usual fees for the use of the building during the convention are paid to the Provincial Treasurer in accordance with a previous resolution approved by the Provincial Board*, this office will have no objection to the use of the auditorium for the purpose, it being understood that the committee in charge will answer for any damage that may be done to the building on account of its use." (Exhibit 5-b; Italics supplied.)

On October 22, the office of the Provincial Governor forwarded the papers "to the Provincial Treasurer, Lingayen, Pangasinan, for appropriate action" (Exhibit 5-b), and, on the same date, the provincial treasurer, upon receipt of the foregoing correspondence, collected the sum of ₱90, from the "Convention Committee," thru defendant Quintos, "for rental of Sison Auditorium for three days, at ₱30 a day," or for the period from November 9-11, 1945" (Exhibit 1).

Moreover, on November 3, 1945, the G-3 Executive Officer of the U. S. Army Forces, Western Pacific, Apo. 70, wrote to the "Security Guard" that "the Society of the Jehovah's Witnesses has authority from the commanding general Base M to occupy buildings adjacent to Lingayen High School" (among which is the Sison Auditorium) "from 9 to 11 November 1945" (Exhibit 4), whereas on November 7, 1945, the real estate Officer of said forces advised the "M. P. Guards, 38th Bomb Group area" that his "office interposes no objection to the use of the buildings" and requested "that you finish adequate guards and assist this people as much as possible" (Exhibit 3). Prior thereto, or on October 15, 1945, the acting mayor of Linga-

yen had issued a permit to defendant Fernandez as "chairman of the convention of Jehovah's Witnesses to parade themselves, around the streets of the town of Lingayen, from November 9-11, 1945, provided that peace and order be maintained." (Exhibit 2-f.)

It would seem that appellants herein, as members of the committee in charge of the convention, took the foregoing communications as sufficient authority to use the Sison Auditorium and hold the convention therein, aside from the parade already alluded to, and that members of the organization known as "Witnesses of Jehovah"—on the nature of which no competent evidence was introduced—gathered in an used said auditorium and presumably held their convention therein, although the matters taken up thereat and the acts performed during the convention were not sought to be established.

On the date first mentioned, or in the morning of November 9, 1945, Sofronio Quimson, then acting provincial governor of Pangasinan, repaired to the auditorium and advised defendant Fernandez that the Witnesses of Jehovah had no permission to use it because the provincial board had not acted on their petition Exhibit 5. As Fernandez replied that he could not decide the matter alone, and had to consult the committee in charge of the convention, Governor Quimson asked him to bring its members to his office. That afternoon Fernandez, Quintos, Pulgar and other members of the organization saw Governor Quimson, who reiterated what he had told Fernandez in the morning and explained that they could not be allowed to use the auditorium in view of the constitutional mandate that "no public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, sectarian institution or system of religion.

(Article VI, sec. 23 [3], Constitution of the Philippines.) Although they asserted that the convention was not religious in character, Governor Quimson bade them to vacate the premises.

Having been informed the next day, November 10, that the Witnesses of Jehovah were still in the auditorium, Governor Quimson requested Captain Pedro Sumulong, C. O., 18th M. P. Co., at Lingayen, Pangasinan, to eject them from the premises. So, Captain Sumulong repaired thereto that morning, but, after examining Exhibits 1 to 5, he decided to take the matter up with the Provincial Commander, M. P. C., at Dagupan, Pangasinan, who, upon hearing the explanations given by appellants and going over their aforesaid papers, advised Captain Sumulong to take the "conventionists back to Sison Auditorium and let them continue until they finish their convention." Thereupon, Captain Sumulong addressed the Witnesses

of Jehovah, as follows: "of ahead, continue as you have heard from my boss."

Upon the foregoing facts, the Court of First Instance of Pangasinan rendered judgment the dispositive part of which reads as follows:

"In view of the foregoing, the Court is of the opinion that the accused have committed the acts set forth in the information filed herein at the time and manner therein stated, and hence are guilty of serious disobedience; and hereby sentence each and every one of them, except Joseph Santos as to whom the complaint has been dismissed, to undergo an imprisonment of 2 months and 1 day of *arresto mayor*, to pay a fine of ₱100, with subsidiary imprisonment in case of insolvency, and one forth (¼) of the costs."

Having appealed therefrom, defendants Fernandez, Quintos and Pulgar contend that the lower court erred:

1. " * * * in holding that the order of the provincial governor, prohibiting the Witnesses of Jehovah to hold their convention in the Sison Auditorium on November 9-11, 1945, was lawful.
2. " * * * in holding that the acts of the defendants-appellants complained of constituted serious disobedience within the purview of article 151 of the Revised Penal Code.
3. " * * * in holding that the use of the auditorium by the Witnesses of Jehovah in connection with their convention on the dates in question was in violation of the constitution.
4. " * * * in holding that the permit (Exhibit '2-A,' '3' and '4'), secured from the military authorities concerned did not include the use of the auditorium and that on the dates in questions, the 38th Bomb Group, U. S. Army was no longer occupying the leased premises.
5. " * * * in convicting the defendants-appellants of the offense of serious disobedience to a person in authority."

Although, obviously, the Provincial Governor and His Honor, the trial Judge, must have acted in the honest belief that the provisions of the Constitution gave them no other choice in the matter, we are firmly convinced that the decision appealed from cannot be affirmed, for the following reasons, to wit:

A. The Sison Auditorium was, from the 9th to the 11th of November 1945, under the control of neither the provincial board nor the provincial governor. This officer admitted that it was occupied by the armed forces of the United States. Although originally the latter had secured no contract of lease or any other specific authority thereto from the Province of Pangasinan, to which it belonged, the government thereof had seemingly accepted the situation as an accomplished fact and impliedly acquiesced thereto. Moreover, it appears that, pursuant to a resolution (Exhibit 8), approved by the provincial board on January 16, 1946, the provincial governor executed on May 1, 1946, in favor of the United States of America, the contract of lease (Exhibit 7), covering several buildings, including the Sison Auditorium, for the period from January 10, 1945 to May 25, 1946. Hence, the Government of the

United States had the right to use the auditorium and to dispose of such use from November 9th to the 11th and, to its duly authorized representatives having specifically allowed the Witnesses of Jehovah to occupy the premises on said date, it is clear that the provincial governor had no authority to eject them therefrom, or order them to vacate the premises, during said period. In any event, whatever the force of such order might have been, at the time of its issuance, disappeared, and whatever defect the permission granted by the representatives of the United States to Witnesses of Jehovah might have had, at the time it was given, became cured, upon the execution of said lease agreement (Exhibit 7).

B. The order issued by the provincial governor was that the Witnesses of Jehovah vacate the Sison Auditorium. The provincial government of Pangasinan can not deny, however, the right of the Witnesses of Jehovah to occupy the premises, the same having been leased to them by the provincial treasurer upon indorsement made by the very office of the Provincial Governor, after consulting the proper school authorities. In this connection, there is uncontradicted testimonial evidence that the provincial treasurer was authorized, by a resolution of the provincial board, to let the auditorium, which is corroborated by the 4th indorsement of the acting Academic Supervisor, on behalf of the Superintendent of Schools (Exhibit 5-b), expressing no objection to the use of the auditorium by the Witnesses of Jehovah, "provided the usual fees for the use of the building during the convention are paid to the provincial treasurer *in accordance with a previous resolution approved by the Provincial Board ***.*" (Italics supplied.) Inasmuch as said resolution of the provincial board had not been revoked, the provincial governor had no power to cancel the contract of lease made by the provincial treasurer in pursuance of the power thus vested in the latter by said board.

C. As testified to by appellants, they may have honestly believed that the verbal order to vacate the Sison Auditorium, issued by the provincial governor, had been superseded by the subsequent order, to the contrary, of the Provost Marshall, addresses to Captain Sumulong, and by the latter's command to "go ahead, continue as you have heard from my boss." Even if such belief were erroneous, it would constitute a mistake of fact, which would suffice to exempt appellants from responsibility, if they were bound to comply with said order of the provincial governor.

D. Aside from the facts that the religious character of the "Witnesses of Jehovah" and of their convention, as well as the holding thereof, are merely assumed or taken for granted, we are not satisfied that the constitutional provision relied upon by the prosecution inhibits the use of public property for religious purposes, when the reli-

gious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general.

In this connection, it should be noted that the Sison Auditorium was open for lease to the public, upon payment of the corresponding fees, and that the Province of Pangasinan allowed the Witnesses of Jehovah to use the premises, not because they presumably constituted a religious organization or intended to hold a convention allegedly of a religious nature, but in consideration of the fees paid by said organization, as any other person or entity could have done so.

In the case of *Orden de Predicadores vs. Metropolitan Water District* (44 Phil., 292, 301-302) our Supreme Court said:

"In its decision, the lower court says that by virtue of section 3 of the Act of Congress of August 29, 1916, known as the Jones Law, the convent of the Dominican Fathers of the City of Manila cannot continue in the free enjoyment of the water supplied by the City of Manila, for the reason that the said section strictly prohibits that any public property or fund be used or destined, without due compensation, for the use, benefit or maintenance of any church, or religious institution or denomination. It should be observed, in the first place, that the free supply of water granted by the old city council of Manila to the convent of Sto. Domingo was made, not on account of any religious consideration, but in return for an act of liberality of the Dominican Fathers in donating part of their lands to the City of Manila for the laying of the water pipes of the Carriedo Waterworks. Secondly, the donation was remuneratory; in other words, the free consumption of water is compensated by the value of more than ten thousand square meters of land which the party plaintiff had donated * * *. It cannot be held, therefore, that the free supply of water to the convent of Sto. Domingo is made without compensation; wherefore we are of the opinion that the court below erred in applying section 3 of the Act of Congress of August 29, 1916, to the present case."

In the more recent case of *Aglipay vs. Ruiz*, (64 Phil., 201, 205-207, 208-210), the same Court used the following language:

"The more important question raised refers to the alleged violation of the Constitution by the respondent in issuing and selling postage stamp commemorative of the Thirty-Third International Eucharistic Congress. It is alleged that this action of the respondent is violative of the provisions if section 18, subsection 3 Article VI, of the Constitution of the Philippines, which provides as follows:

"'No public money or property shall ever be appropriated, applied or used, directly or indirectly for the use, benefit, or support of any sect, church denomination, sectarian institution, or system of religion, or for the use, benefit, or support any priest, preacher, minister, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.'"

The prohibition herein expressed is a direct corollary of the principle of separation of church and state. Without the necessity of advertising to the historical background of this principle in our country, it is sufficient to say that our history, not to speak of the

history of mankind, has taught us that the union of church and state is prejudicial to both, for occasions might arise when the state will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims. The Malolos Constitution recognized this principle of separation of church and state in early stages of our constitutional development; it was inserted in the Treaty of Paris between the United States and Spain of December 10, 1898, reiterated in President McKinley's Instructions to the Philippine Commission, reaffirmed in the Philippine Bill of 1902 and in the Autonomy Act of August 29, 1916, and finally embodied in the Constitution of the Philippines as the supreme expression of the Filipino people. It is almost trite to say now that in this country we enjoy both religious and civil freedom. All the officers of the Government, from the highest to the lowest, in taking their oath to support and defend the constitution, bind themselves to recognize and respect the constitutional guarantee of religious freedom, with its inherent limitations and recognized implications. It should be stated that what is guaranteed by our Constitution is religious liberty, not mere religious toleration.

"Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people in the preamble of their constitution implores 'the aid of *Divine Providence*, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy,' they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The elevating influence or religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscremately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. I, subsec. 4, Ordinance appended thereto; Assessment Law, sec. 344, par. c, Adm. Code.) Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or leprosarium (sec. 13, subsec. 3, Art. VI, Constitution of the Philippines). Optional religious instruction in the public schools is by constitutional mandate allowed (sec. 5, Art. XIII, Constitution of the Philippines, in relation to sec. 928, Adm. Code). Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal Holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conducive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state (see Arts. 132 and 133, Revised Penal Code) * * *.

"Act No. 4052 contemplates no religious purpose in view. What it gives the Director of Posts is the discretionary power to determine when the issuance of special postage stamps would be 'advantageous to the Government.' Of course, the phrase 'advantageous to the Government' does not authorize the appropriation, use or application of public money or property for the use, benefit or support of a particular sect or church. In the present case, however, the issuance of the postage stamps in question by the Director of Posts and the Secretary of Public Works and Communications was *not*

inspired by any sectarian feeling to favor a particular church or religious denomination. The stamps were not issued and sold for the benefit of the Roman Catholic Church. Nor were money derived from the sale of the stamps given to that church. * * * It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, *the resulting propaganda, if any received by the Roman Catholic Church, was not the aim and purpose of the Government.* We are of the opinion that the Government should not be embarrassed in its activities simply because of *incidental* results more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. The main purpose should not be frustrated by its subordination to mere incidental results not contemplated." (Vide *Bradfield vs. Roberts*, 175 U. S., 295; 20 Sup. Ct. Rep., 121; 44 Law. ed., 168.) (Italics supplied.)

Events of contemporary history bear out the views thus expressed by the highest Court of the land. Thus, for instance, early in 1937, a big portion of the Luneta, in the City of Manila, which is public property, was laid aside and used for several days in connection with an Eucharistic Congress held under the auspices of the Roman Catholic Church. Only recently, religious ceremonies were held in another public property, the Rizal Stadium, in the same City, to celebrate the 50th Anniversary of the ordination of the Archbishop of Manila as priest of the same Church. Religious processions are held daily, with the permission of the authorities, in public streets and highways, throughout the Philippines, and yet it has never been suggested that such use of public property infringed the provisions of our organic laws implementing the principle of separation of the Church and the State.

Indeed, our practice and jurisprudence thereon are backed up by a long line of precedents, some of which we quote hereunder:

"In some jurisdictions it is held that a schoolhouse may be used for religious meetings at times when such meetings will not interfere with the school work. [*Nichols vs. School Directors* (1879) 93 Ill. 61, 34 Am. Rep. 160; *School Directors vs. Toll* (1909) 149 Ill. App. 541; *Hurd vs. Walters* (1874) 48 Ind. 148; *Baggerley vs. Lee* (1905) 37 Ind. 139, 73 N. E. 921; *Townsend vs. Hagan* (1872) 35 Iowa, 194; *Davis vs. Boget* (1878) 50 Iowa, 11; *State ex rel. Gilbert vs. Dilley* (1914) 95 Neb. 527, 50 L. R. A. (N. S.) 1182, 145 N. W. 999; *Greenbanks vs. Boutwell* (1870) 43 VT. 207. And see *Lagow vs. Hill* (1909) 238 Ill. 428, 87 N. E. 369.]

"Thus, in *State ex rel. Gilbert vs. Dilley* (1914) 95 Neb. 527, 50 L. R. A. (M. S.) 1182, 145 N. W. 999, it was held that the occasional use of a schoolhouse for Sunday School and religious meetings over a period of five years, and not more than four times in any one year, on Sundays, when such meetings did not interfere with the school work, did not constitute the schoolhouse a place of worship within the meaning of the constitutional provisions prohibiting compulsory attendance on places of worship, or taxation for the maintenance thereof.

"In *Townsend vs. Hagan* (1872) 35 Iowa, 194, it was held that, under a statute conferring authority of the electors of a school district to direct the sale or 'other disposition' to be made of any

schoolhouse, they have the power, by vote, to permit the use of such building for religious purposes.

"So, in another case decided on the authority of *Townsed vs. Hagan* (Iowa) *supra*, and *Davis vs. Boget* (1878) 50 Iowa, 11, it was held that the electors of a district township, by virtue of the authority given them by statute, have power by vote to order that a school-religious worship, and lectures on moral and scientific subjects, at such times as would not interfere with the regular progress of the public schools, and such use is not in conflict with a constitutional provision (art. 1, sec. 3) against compelling any person to pay taxes for building or repainting places of worship, especially where such use was temporary and occasional, and abundant provision was made for securing damages. The court said: 'Aside from the consideration that in *Townsend vs. Hagan*, *supra*, it was determined that the district electors did have such power as is here complained of, and that such use was not unreasonable, we incline to think that the use of a public school building for Sabbath schools, religious meetings, debating clubs, temperance meeting, and the like, and which, of necessity, must be occasional and temporary, is not so palpably a violation of the fundamental law as to justify the courts in interfering. Especially is this so where, as in the case at bar, abundant provision is made for securing any damages which the taxpayer may suffer by reason of the use of the house for the purposes named. With such precaution, the amount of taxes anyone would be compelled to pay by reason of such use would never amount to any appreciable sum. We may further say that the use for the purposes named is but temporary, occasional, and liable at any time to be denied by the district electors, and such occasional use does not convert the schoolhouse into a building for worship, within the meaning of the Constitution. The same reasoning would make our halls of legislation places of worship, because in them, each morning, prayers are offered by chaplains.'

"In Illinois, the specific authority of statutes for such use had been invoked. In *Nichols vs. School Directors* (Ill.) *supra*, it was held that a statute (Ill. Rev. Stat. 1874, p. 958, sec. 39) authorizing the directors of a school district to grant the temporary use of a schoolhouse, when not occupied by school, for religious meetings and Sunday Schools, and for such other meetings as the directors might deem proper, and the act of a school district in granting the use of a schoolhouse for religious meetings and Sunday School, was authorized, and did not contravene a constitutional provision (art. 2, sec. 3) that no person should be required to support a place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship, or a provision (art. 8, sec. 3) which forbade any school district from marking an appropriation in aid of any church, or for sectarian purposes, or a provision (art. 8, sec. 2) which required all school property to be faithfully applied to the object for which such gifts or grants were made. The court said: 'It seems to us a very strained interpretation to attempt to bring the present case within the reach of either one of the above constitutional provisions. The latter one relates to the subject of a gift or grant, which this schoolhouse is not shown to be, and if it were, it is not perceived wherein an incidental use of the house for the holding of religious meetings, not in any way in interference with school purposes, would in any reasonable sense be inconsistent with its faithful application to the object of the gift or grant. The second provision respects the making of an appropriation or payment from some public fund in aid of any church or sectarian purpose, and it cannot be claimed that this contemplated use of the schoolhouse is such. In what manner, from the holding of religious meetings in the schoolhouse, complainant is going to be compeled to aid in furnishing a house of worship and for holding religious meet-

ings, as he complains in his bill, he does not show. We can only imagine that possibly at some future time he might, as a taxpayer, be made to contribute to the expense of repair, rendered necessary from wear and use of the building in the holding of religious meetings. A single holding of a religious meeting in the schoolhouse might in that way cause damage in some degree to the building, upon away stone, but the injury would be inappreciable. As respects any individual pecuniary expense which might be in this way involved, we think that consideration may be properly disposed of under the maxim, 'De minimis', etc. The thing contemplated by the constitutional provision first above named was a prohibition upon the legislature to pass any law by which a person should be compelled, without his consent, to contribute to the support of any ministry or place of worship. Such a matter as the subject of complaint here, we do not regard as within its purview. *Religion and religious worship are not so placed under the ban of the Constitution that they may not be allowed to become the recipient if any incidental benefit whatsoever from the public bodies of authorities of the state.* That instrument itself contains a provision authorizing the legislature to exempt property used for religious purposes from taxation; and thereby, the same as is complained of here, there might be indirectly imposed upon the taxpayer the burden of increased taxation, and in that manner, the indirect supporting of places of worship. In respect of the possibility of enhanced taxation therefrom, this provision of the Constitution itself is even more obnoxious to objection than this permission given by the school directors to hold religious meetings in the schoolhouse. There is no pretense that it is in any way an interference with the occupation of the building for school purposes." (5 A. L. R. pp. 886-888. Italics supplied.)

"While the reading of the Bible may in some sense, for the time being, make the schoolhouse a place of worship, it is not such in the sense intended to be forbidden by the Constitution. The object of constitutional provisions of this nature is not to prevent the *casual* use of a public building as a place for offering prayer, or doing other acts of religious worship, but to prevent the enactment of a law whereby any person can be compelled to pay taxes for building or repairing any place designed to be used distinctively as a place of worship and so to prohibit an improper burden of taxation. The test is whether such a burden is imposed. The reading of the Bible in the schools, or any *incidental* religious service, does not transform the schoolhouse into a place of worship in the constitutional sense, since the burden of taxation is not thereby increased." (Moore vs. Monroo, 64 Iowa 367, 20 NW 475, 52 Am. Rep. 44 Italics supplied.)

"The power of the school authorities to prohibit the use of a schoolhouse for religious worship is apparently well recognized. However, it should be noted in passing that restrictions as to sectarianism relate only to the use made of schools and not to religious affiliations of the users. But as to whether the school directors may permit a schoolhouse to be used for religious purposes outside of schoolhours, the decisions are not in entire harmony. Authority exists for the view that a schoolhouse may be used for religious meetings where the religious services do not interfere with the use of the building as a school, are so infrequent as not to turn the building into a place of worship, and impose no burden of expense on the taxpayers. In other jurisdictions, public-school buildings may not be used for religious meetings in the absence of a statute on the subject. However, the specific authority of statutes may be invoked to grant the use of schoolhouses for religious purposes, enactments permitting school directors to do so having been held constitutional." (47 An. Jr., Sec. 213, p. 453.) (Italics supplied)

E. The powers exercised by municipal corporations are not all governmental in nature, for they perform dual functions.

"The two fold character of the powers of a municipality under our Municipal Code (Act No. 82) is so apparent and its private or corporate powers * * * so numerous and important that we find no difficulty in reaching the conclusion that the general principles governing the liability of such entities to private individuals as enumerated in the United States are applicable to it. The distinction between *governmental powers* on the one hand, and *corporate or proprietary or business powers* on the other, as the latter class is variously described in the reported cases, has been long recognized in the United States and there is no dissent from the doctrine.

* * * * *

"* * * In the administration of its patrimonial property, it is to be regarded as a *private corporation* or individual so far as its liability to third persons on contract or in tort is concerned. Its contracts, validly entered into, may be enforced and damages may be collected from it for the torts of its officers or agents within the scope of their employment in precisely the same manner and to the same extent as those of *private corporations* or individuals. As to such matters the principles of *respondeat superior* applies. It is for these purposes that the municipality is made liable to suits in the courts.

"'Municipal corporations are subject to be sued upon contracts and in tort. In a previous chapter we have considered at length the authority of such corporations to make contracts, the mode of exercising, and the effect of transcending the power. This leaves but little to add in this place respecting their liability in actions *ex contractu*. Upon an authorized contract—that is, upon a contract within the scope of the character or legislative powers of the corporation and duly made by the proper officers or agents—they are liable in the same manner and to the same extent as *private corporations or natural persons*.' Dillon on Municipal Corporations, 5th ed., sec. 1610.)

* * * * *

"* * * *In the administering the patrimonial property of municipalities, the municipal council occupies, for most purposes, the position of a board of directors of a private corporation.*" (Mendoza vs. De Leon, 33 Phil., 508.) (Italics supplied.)

If in the administration of its patrimonial properties a municipal corporation "is to be regarded as a *private corporation or individual*" and its municipal council "occupies, for most purposes, the position of a *board of directors of a private corporation*," then, in the administration of said properties, the provincial governor or the municipal mayor performs a role abilogoua to that of the manager or executive officer of a *private corporation* or enterprise. There is reason, therefore, to doubt that, in the discharge of his duties as such, he acts as a person in authority.

Thus, a municipal corporation may not, without going to court, rescind a contract of lease of a patrimonial property thereof, and would act illegally should it forcibly eject therefrom the lessee who had violated the terms of said contract, and would be responsible in damages for such unlawful act (Municipality of Moncada vs. Cajuigan,

19 Phil., 184, 193). It has been held, also, that one who fails and refuses, upon demand by the sheriff, to vacate a land, despite a final decision sentencing him, as defendant in a civil case, to restore the possession of said property to the plaintiff therein, and a writ issued for the execution of said decision, does not commit the crime of disobedience to a person in authority, because—

“* * * The juridical conception of this crime consists in a failure to comply with orders directly issued by the authorities in the exercise of their official duties, and not with legal provisions of general character, nor with judicial decisions merely declaratory of rights or obligations, such as those proper to be rendered in a civil suit relative to property or the possession of land, like that which gave rise to the present controversy. Nor even do the violations of prohibitory decisions, although undoubtedly of a more serious character, constitute the crime of disobedience to the authorities provided for and punished by the aforesaid article of the Penal Code, for they give rise only to a civil action. (Decisions of the Supreme Court of Spain of September 25 and October 4, 1889, and June 30, 1893.)” (U. S. vs. Ramayrat, 22 Phil., 183, 189.)

Hence, we are not prepared to hold that failure or refusal to comply with an order, to vacate said property issued without a court proceeding, by a municipal mayor—which, if forcibly executed, would constitute an illegal act, for which the mayor and the municipal government might be held civilly responsible in damages—would constitute the crime aforementioned.

In view of the foregoing, the decision appealed from is hereby reversed and the defendants-appellants acquitted, with costs *de oficio*.

It is so ordered.

Montemayor, Pres., J., and Dizon, J., concur.

Judgment reversed; appellants acquitted with costs de oficio.

[No. 664-R. June 11, 1948]

FRANCISCO VILLAROMAN, plaintiff and appellee, *vs.* EUGENIO D. REYES, defendant and appellant

PLEADING AND PRACTICE; EJECTMENT; UNLAWFUL DETAINER; CAUSES OF ACTION IN UNLAWFUL DETAINER; CASE AT BAR.—The suit of unlawful detainer may be based on either one of two causes: failure to pay the rents after demand (section 2, rule 72, Rules of Court), or resolution of the right to occupy the leased premises because of the termination of the lease contract or the expiration of the period fixed (*Co Tiamco vs. Diaz et al.*, 42 Off. Gaz., 1169). The case at bar is based not on the first cause but on the second. As there was no period for the duration of the lease, the law declares that it shall be from month to month, because rentals are paid monthly (article 1581, Civil Code). When the plaintiff wrote his letter of demand for the lessee to vacate the premises on July 2, 1945, he declared the lease thereby terminated, and the suit of unlawful detainer became available to him, irrespective of whether the lessee had been paying his rents or not promptly. The only cir-

cumstance under which the lessor may not terminate the lease at will, upon the expiration of the period thereof, would be in case the premises, subject of the lease, fall within the provisions of the House Rental Law, i. e., when the premises are destined as dwelling only (section 2, House Rental Law, as amended). But the premises in the case at bar are admittedly used for business and commercial purposes, not exclusively as dwelling for the lessee (See Decision on similar *accesorias*, CA-G. R. Nos. 563-566-R).

APPEAL from a judgment of the Court of First Instance of Manila. Peña, J.

The facts are stated in the opinion of the court.

Eugenio D. Reyes, for appellant.

Celestino L. de Dios for appellee.

LABRADOR, J.:

This is an action originally instituted in the municipal court of Manila on August 2, 1945, to eject the defendant from *accesoria* No. 1340 Magdalena Street, Manila, and to recover back rentals from him. The plaintiff alleges that the defendant has failed to pay the rents, notwithstanding repeated demands from him therefor, that the plaintiff needs the *accesoria* for his own use, and that the period given the defendant to vacate the *accesoria* has expired without his having complied with plaintiff's demand. The defendant denied the principal allegations of the complaint and alleged as special defense that in the month of December, 1944, he offered to pay the rentals for the *accesoria*, but that the plaintiff refused to accept them for the reason that he desired to increase them to ₱100 per month, which increase was refused by the defendant; that upon said refusal plaintiff required the defendants to pay as rents the sum of ₱80 for the month of December, 1944, and ₱200 from the month of January, 1945, until the premises are vacated; that the purpose of the plaintiff in filing the action is to increase the rental to an excessive amount, which is nine hundred per cent more than the prewar rental; that at the time the defendant occupied the *accesoria* there was an understanding between him and the plaintiff that he would occupy it all the time that he wanted, and that because of this understanding the defendant repaired the electrical installations to the amount of ₱20; that even if there were no written contract about the lease, the custom of the place is that the lessee is to occupy it for all the time that he desires, provided that he complies with the conditions previously agreed upon, and the *accesoria* in question is precisely for renting purposes; and that the defendant is willing to pay an increase in rentals provided the same is reasonable.

Trial of the case having been held in the Court of First Instance, the latter on August 23, 1944, rendered

judgment finding that the premises, together with the other *accesorias* located in the same building, are being used for business and commercial purposes, not solely for residential purposes, and that the lease was terminated because no period therefor had been fixed, and ordered the defendant to vacate the premises and pay the plaintiff the sum of ₱60 from March 11, 1945, until the same is vacated, with costs (Record on Appeal, pp. 5-6). Against this judgment the present appeal has been prosecuted and various assignments of error are made, among which are (1) that the trial court erred in finding that the defendant has failed to pay rents from January, 1945; (2) that it erred in finding that plaintiff needs the premises and that defendant was asked to vacate the premises for that reason; (3) that it erred in not dismissing the complaint and in not absolving the defendant therefrom; and (4) that it erred in increasing the monthly rental from ₱21 to ₱60.

The evidence submitted at the trial shows that the *accesoria* in question, designated as No. 1340 Magdalena Street, is similar to the *accesorias*, subjects of similar cases instituted by the plaintiff herein, namely, CA-G. R. Nos. 563-566-R, and, together with these, is in a building located on Magdalena Street, just in front of the Bambang market. The *accesoria* has two floors, and the lower floor is utilized by the defendant as a drug store (see Exhibit A-Reyes). After the liberation it was also used for the sale of canned goods. The *accesoria* began to be occupied by the defendant in the year 1942 and the monthly rental that he had been paying from that time was ₱21. The defendant paid this rent up to December, 1944, and in the month of January, 1945, he offered to pay plaintiff the said rent, but the latter refused to accept it, demanding an increased rental of ₱100. In the month of April, plaintiff, through his attorney, demanded a monthly rental of ₱80 for the month of December, 1944, and ₱200 from January, 1945 (See Exhibits C-Reyes and C-1-Reyes). In these letters of counsel for the plaintiff a demand to vacate the premises is made, in addition to the demand for the payment of back rentals.

The gist of the argument of appellant on this appeal is that, as the defendant has not defaulted in the payment of his monthly rentals, because the increase thereof is not justified and because he had been depositing them in court (after the institution of the action), and as the plaintiff does not actually need the premises, the court should have dismissed the complaint and absolved the defendant therefrom. The above argument is fallacious, for it is based on the erroneous assumption that the suit for the ejectment of a lessee is justified only on two grounds, namely, default in the payment of rentals or when lessor needs the premises. The suit of unlawful detainer may be

based on either one of two causes: failure to pay the rents after demand (section 2, Rule 72, Rules of Court), or resolution of the right to occupy the leased premises because of the termination of the lease contract or the expiration of the period fixed (*Co. Tiamco vs. Diaz et al.*, 42 O. G. 1169). The case at bar is based not on the first cause but on the second. A study of the evidence shows that the demand to vacate the premises was made independently of the payment of rents and not as a consequence thereof. So in Exhibit C-Reyes, notice was given "to VACATE the premises and for the payment of lessee's indebtedness on or before May 6, 1945." And in Exhibit C-1-Reyes, dated July 2, 1945, the lessee was requested to vacate the premises, for the lessor "intends to use the building, which makes it necessary for all the tenants to surrender the entire premises to him." If the lessor needs the premises for his own purposes, it is evident that it is his desire to terminate the lease because of such need, irrespective of whether the lessees have been paying their rents promptly. The failure of the lessee to pay the rents demanded may have been a motive impelling the lessor to terminate the lease, but the immediate and proximate cause is the need of the lessor of the premises.

With the above explanation in mind, we hold that the decision appealed from is fully justified. As there was no period for the duration of the lease, the law declares that it shall be from month to month, because rentals are paid monthly (article 1581, Civil Code). When the plaintiff wrote his letter of demand for the lessee to vacate the premises on July 2, 1945, he declared the lease thereby terminated, and the suit of unlawful detainer became available to him, irrespective of whether the lessee had been paying his rents or not promptly. The only circumstance under which the lessor may not terminate the lease at will, upon the expiration of the period thereof, would be in case the premises, subject of the lease, fall within the provisions of the House Rental Law, i. e., when the premises are destined as dwellings only (section 2, House Rental Law, as amended). But the premises in the case at bar are admittedly used for business and commercial purposes, not exclusively as dwelling for the lessee (See Decision on similar *accesorias*, CA-G. R. Nos. 563-566-R). For the above reasons, we are constrained to hold that the defenses raised in pursuance of the House Rental Law and as contained in the first three errors assigned on this appeal may not be availed of. It follows that said three errors are not well taken and that the decision of the trial court is correct.

With respect to the fourth assignment of error, it must be remarked that, as the premises are not destined solely for dwelling, and, therefore, not covered by the provisions of the House Rental Law, the limitations contained in said law as to rentals are also not applicable. In view of

the relatively low value of money since the liberation and the scarcity of buildings for residences or for business purposes, we do not think that the amount of ₱60 fixed by the trial court as the reasonable value for the use and occupation of the premises is unreasonable. Indeed, taking into account the location of the premises and the fact that it is used for business purposes, as well as the readiness of many merchants to pay ₱200 monthly rentals, we feel that it is rather low, but that since the defendant has not appealed from the amount fixed by the trial court, we should not in this instance raise the said amount. Furthermore, in view of our conclusion that the premises in the case at bar are not used for dwelling exclusively, the case of *Santos vs. De Alvarez* and the other cases cited by the appellant in the other assignments of error can have no application to the case at bar.

The judgment appealed from requires the defendant to pay rents only from March 11, 1945, the date when the moratorium order became effective. It appears from the complaint, however, that plaintiff seeks the payment of rents from January, 1945, and that defendant has not alleged the moratorium order as a special defense. Under these circumstances, the provisions of said order have been waived by the defendant (*Ma-ao Sugar Central Co., Inc. vs. Barrios et al*, SC-G. R. No. L-1539), and judgment for the amounts due, which would otherwise have been suspended by the operation of the provisions thereof, should be rendered. The record shows that the demand for increased rentals was made upon the defendant as early as the month of January, 1945. Following our ruling in the case of *Francisco Villaroman vs. Ponciano Bustamante*, CA-G. R. Nos. 563-566-R, the increased rentals should be effective from the month of February, 1945, the month following that on which the notice of increased rental was received by lessee.

Wherefore, the judgment appealed from is hereby modified and the defendant is ordered to pay the rent of ₱21 for the month of January, 1945, and ₱60 thereafter. In all other respects the judgment appealed from is hereby affirmed, with costs against the appellant. So ordered.

Paredes and Abad Santos, JJ., concur.

Judgment modified.

[No. 664-R. July 8, 1948]

FRANCISCO VILLAROMAN, plaintiff and appellee, *vs* EUGENIO D. REYES, defendant and appellant

HOUSE RENTAL LAW AND EXECUTIVE ORDER NO 62, COMPARED; CASE AT BAR.—There is not much difference between the provisions of the House Rental Law and those of Executive Order No. 62 as to buildings to which either is applicable. The House Rental Law speaks of buildings destined solely for dwelling, but

excepts buildings incidentally used for the prosecution of a home industry, whereas Executive Order No. 62 applies to buildings not principally used for a commercial or industrial purpose. Admitting, for the sake of argument, that there exists a slight difference in meaning, we hold that under the circumstances of the present case the premises in question can not be made to fall under the provisions of Executive Order No. 62. If, from the time the appellant occupied the premises, he already had a drug store therein and had maintained it since then up to the present, and even had gone to the extent of engaging in the buy and sale of canned goods, it is our considered opinion that the premises have been used principally for commercial purposes, within the meaning of the Executive Order in question.

RESOLUTION on motion for reconsideration of the decision rendered in this appeal. Labrador, J.

The facts are stated in the opinion of the court.

Eugenio D. Reyes for appellant.

Celestino L. de Dios for appellee.

RESOLUTION

LABRADOR, J.:

This concerns a motion for reconsideration presented by defendant-appellant, in which the provisions of Executive Order No. 62 of the President of the Philippines dated June 21, 1947, regulating rentals of houses and lots for residential purposes, are sought to be invoked on behalf of the defendant-appellant.

We held in our decision that inasmuch as the premises, subject of the action, are being used for a drug store and for the sale of canned goods, the provisions of the House Rental Law are not applicable, as the latter apply only to buildings which are destined solely for dwelling. It is contended on behalf of the movant that the purpose of Executive Order No. 62 is to include within its provisions buildings other than those principally used for commercial or industrial purpose. We do not find much difference between the provisions of the House Rental Law and of said Executive Order No. 62 with respect to buildings to which either is applicable. The House Rental Law speaks of buildings destined solely for dwelling, but excepts buildings incidentally used for the prosecution of a home industry, whereas Executive Order No. 62 applies to buildings not particularly used for a commercial or industrial purpose. But even admitting, for the sake of argument, that there exists a slight difference in meaning, we hold that under the circumstances of the present case the premises in question can not be made to fall under the provisions of Executive Order No. 62. If, from the time the appellant occupied the premises, he already had a drug store therein and had maintained it since then up to the present, and even had gone to the extent of engaging in the buy and sale of canned goods, it is our considered

opinion that the premises have been used principally for commercial purposes, within the meaning of the Executive Order in question.

In his motion appellant also claims that the present action was not based on the right of the lessor to terminate the lease contract. As we stated in our decision, the fact that the lessor notified the lessee that he intends to use the building, including the premises in question, and predicated thereon his request or demand that the lessee vacate the same, is sufficient to appraise defendant that the lessor bases his action, not on the failure to pay rents, but on the lessor's right to terminate the lease. It is not necessary that the lessor should have expressly stated that he bases his right on the termination of the contract of lease; it is sufficient that he had demanded that the lessee vacate the premises because he (the lessor) needs the same. Both the need for the premises and his demand to vacate can certainly be based on no other ground than on his right to terminate the lease upon expiration of the lessee's right thereto.

For all the foregoing considerations, the court hereby RESOLVES to deny, as it hereby denies, the motion for reconsideration. So ordered.

Paredes, Abad Santos and Labrador, JJ. concur.

[No. 761-R. June 11, 1948]

FRANCISCO VILLAROMAN, plaintiff and appellee, vs. JOSE PANGILINAN, defendant and appellant *

EJECTMENT; LEASE; HOUSE RENTAL LAW; USE OF LEASED PREMISES IN ORDER TO BE WITHIN THE SCOPE OF THE HOUSE RENTAL LAW; CASE AT BAR.—The premises for which the benefits of the House Rental Law may be invoked are those that are used or destined as a dwelling only, even if a home industry is carried on therein. In the case at bar, the lessee, a physician by profession, is operating a drug store in the premises in question. A drug store not being a home industry for a physician, the defenses set forth in the House Rental Law available to tenants of premises used as dwellings exclusively may not be availed of by the lessee.

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Arturo L. Rodriguez for appellant.

Celestino L. de Dios for appellee.

LABRADOR, J.:

The subject of the present action is the lower floor of an *accesoria* known as No. 505 Bambang Street, which the defendant has been occupying since the year 1937 at

* See Resolution Sup. Court G.R. No. L-2385, dated August 11, 1948. Petition dismissed for lack of merit.

a monthly rental of ₱15. He failed to pay rents from the month of August, 1944. In the month of April, 1945, the plaintiff notified the defendant that he vacate the premises and pay the sum of ₱200 a month from December, 1944. Again on July 2, 1945, plaintiff reiterated said demand (Stipulation of Facts, Record on Appeal, pp. 10-11). The defendant is a physician by profession, and he has a drug store on the said floor. Previous to the war he had been occupying two contiguous *accesorias*. The reason why he had failed to pay rents since September, 1944, is because he had been called to the Army and he had no money with which to pay the rents.

The action was brought on August 2, 1945, and the municipal court of Manila, where the action was originally instituted, ordered defendant to vacate the premises and pay the back rents from March 11, 1945, at the rate of ₱30 per month (Record on Appeal, pp. 1, 3). On appeal to the Court of First Instance of Manila, said court held that the premises is situated in a commercial section of the city, in front of the public market of Bambang, and that the defendant is using it for business and commercial purposes, besides living in it. It held, therefore, that the provisions of Commonwealth Act No. 689 may not be taken advantage of. It further held that since there was no period for the duration of the lease, it was from month to month and could be terminated by the plaintiff. The court fixed the rental of the premises at ₱60 a month, and rendered judgment against defendant to pay it from March 11, 1945, until he vacates them.

Against the above judgment this appeal has been prosecuted. The defendant claims (1) that the lower court erred in considering that the defendant is using it for business and commercial purposes; (2) that it erred in not holding that the premises in question are residential, within the purview of the provisions of Commonwealth Act No. 689; (3) that it erred in ordering defendant to vacate the premises, notwithstanding the readiness of the defendant to pay the reasonable rentals as fixed by the court; (4) that it erred in not dismissing the complaint, which is vexatious and oppressive; and (5) that the increase of rentals from ₱15 to ₱200, representing an increase of 1333 per cent, is unconscionable and contrary to law and public morals.

Following our ruling in CA—G.R. Nos. 563-566-R, we hold that the *accesoria* in question is not destined for dwelling purposes exclusively, and is not covered by the House Rental Law. The premises for which the benefits of the House Rental Law may be invoked are those that are used or destined as a dwelling only, even if a home industry is carried on therein. The defendant is a physician by profession. If he had a clinic in his residence, that would not, perhaps, convert it into a commercial

place. But he is operating a drug store and he had that drug store established since the year 1937. A drug store is not a home industry for a physician. As a consequence, the defenses set forth in the House Rental Law available to tenants of premises used as dwellings exclusively may not be availed of by the defendant. The first and second assignments of error are, therefore, without merit.

Under the third assignment of error, it is claimed that the supposed willingness of the defendant to pay the reasonable rents, which he had been depositing in court from the time the latter had fixed them, should be a defense to the action. It is also argued that the arrears in rentals during the occupation period was due to the refusal of the plaintiff to receive payment in Japanese war notes. In answer to these arguments, it may be stated that the present action is predicated on the right of the lessor to terminate the lease because of the termination of the period thereof, and not upon the failure of the defendant to pay the monthly rents. The trial court found that as no period was provided for the duration of the lease, and as the rents were agreed to be paid monthly, the lease was from month to month (article 1581, Civil Code). We find this holding to be correct. When on July 2, 1945 (see Exhibit B, attached to the stipulation of facts), the plaintiff demanded that the defendant vacate the premises because he needs them, the lease was terminated thereby, and the defendant may not continue thereafter, or after the expiration of the month on which the notice was given even if he were willing to pay the rents that the court may fix as reasonable.

Under the fourth assignment of error, the demand made by the plaintiff for an increase of rentals from ₱15 to ₱200 is attacked as oppressive, unconscionable, and contrary to law and public morals. The trial court sustained defendant's objection to the said rents when it fixed them at ₱60 per month. The appellant has not appealed from this finding of the trial court. As already stated, defendant's willingness to pay this rental can not extend the lease which the lessor terminated. But we note that the demand for increased rentals was not clearly made until April 30, 1945, when the letter of plaintiff's counsel was sent to the defendant. The increased rentals fixed by the court should begin, therefore, from the month of May, 1945. The court has not rendered judgment on the rents pertaining to the period before the executive order on moratorium took effect on March 11, 1945, evidently because of the provisions of this order. But since the plaintiff in his complaint demands rentals from August, 1944, and the defendant has not interposed the moratorium order as a defense and has, therefore, waived it (*Ma-ao Sugar Central Co., Inc. vs. Barrios, et al.*, SC-G. R. No. L-1539; *Francisco Villaroman vs. Felipe Arriola*,

CA-G. R. No. 710-R), judgment should be rendered for said back rents, which in this case is at the rate of ₱15 per month from September, 1944, to April, 1945.

For all the foregoing considerations, the judgment appealed from is hereby modified in the sense that the defendant shall pay back rents from September, 1944, to April, 1945, at the rate of ₱15 per month, and thereafter at the rate of ₱60 per month. In all other respects the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Paredes and Abad Santos, JJ., concur.

Judgment modified.

[No. 2871-R. June 11, 1948]

ELISEO GALANG, CARMEN LACANOLAO, EVARISTO MANLUTAG, TOMAS SAGCAL, IRINEO GAMBOA and GERMAN PAYAWAL, protestants and appellees, *vs.* PASCUAL PELAYO, ANASTACIO GALANG, GONZALO PELAYO, ANGELO GALANG, PABLO REYES and IGNACIO DE LA PEÑA, protestees and appellants.

ELECTION LAW; APPEAL REGARDING ELECTION OF VICE-MAYORS OR MUNICIPAL COUNCILORS; LEGALITY OF ORDER OF C. F. I. ALLOWING APPEAL.—Section 178 of the Revised Election Code is silent as to the right to appeal in election contests for Vice-Mayors or Municipal Councilors. Hence, under the principle *inclusio unius est exclusio alterius*, it is beyond question that the right to appeal in election contests was granted only to those expressly mentioned in Section 178 of the Revised Election Law. Thus, the order of the lower court allowing the appeal in this case is illegal, it being evident that the decision appealed from is unappealable.

APPEAL from a judgment of the Court of First Instance of Pampanga. Lucero, J.

The facts are stated in the opinion of the court.

Baltazar & Macalino for appellants.

Ramon Diokno for appellees.

RESOLUTION

ENDENCIA, J.:

This case is before us on a motion to dismiss filed by the protestants on the ground (1) that the appeal was directed against an interlocutory order denying a motion for reconsideration and new trial, which is unappealable and not against the decision rendered in the case, and (2) that in election contests for vice-mayors and municipal councilors, the decision of the lower court is unappealable.

It appears that after the lower court has rendered judgment against the protestees-appellants on April 14, 1948, the latter filed a *moción alternativa de reconsidera-*

ción y nueva vista y anuncio de apelación. The prayer of which is as follows:

"Por lo expuesto, los recurridos piden al Juzgado se sirva (1) reconsiderar su decisión, (2) declarar, después, nulas las elecciones en los precinctos objeto de protesta y (3) sobreseer la protesta, con las costas del juicio y gastos incidentales a cargo de los recurrentes.

"En el caso remoto de que el Juzgado tuviese a bien denegar esta moción de reconsideración, los recurridos se excepcionan del auto denegatorio que se dictare, anunciando, como anuncian por la presente y desde esta fecha, su intención de apelar contra la decisión que se dictara en su contra para ante la Corte de Apelaciones, y para cuyo caso se ofrece la prestación de la fianza que el Juzgado tenga a bien fijar para los efectos de la apelación."

On May 12, 1948, the lower court overruled said *moción alternativa* in an order which reads as follows:

"Wherefore, said motion is hereby denied; as to the intention of the protestees to appeal from the resolution of this Court, in case their motion for reconsideration and new trial is denied, the Court believes that said intention to appeal is now in order, their said motion having by these presents been denied; they are, therefore, ordered to file a bond of P60 for the purpose within five (5) days upon receipt of this order; and upon filing the required bond, let the original records of these cases be transmitted to the Court of Appeals within 5 days."

Thereupon, the protestants-appellees filed an urgent petition to dismiss the appeal of the protestees-appellants interposed against the order overruling the motion for reconsideration for new trial, which was opposed by the protestees-appellants. After hearing, the lower court overruled such motion and orders the Clerk of Court to transmit to the Court of Appeals the record of this case on the ground that the protestees-appellants have perfected their appeal from the aforementioned order of May 12, 1948. Accordingly, the record was forwarded to this Court and for this reason protestants-appellees filed the motion for dismissal now under consideration.

Section 178 of the Revised Election Code, provides:

*"Appeal from the decision in election contests.—*From any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be, within five days after being notified of the decision, for its revision, correction, annulment or confirmation, and the appeal shall proceed as in a criminal case. Such appeal shall be decided within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken."

It can be readily seen from the aforequoted provision of law that it keeps silent as to the right to appeal in election contests for vice-mayors or municipal councilors. Hence, under the principle *inclusio unius est exclusio alterius*, it is beyond question that the right to appeal in election contests was granted only to those expressly mentioned in Section 178 of the Revised Election Law.

Thus, the order of the lower court allowing the appeal in this case is illegal, it being evident that the decision appealed from is unappealable.

As to the other question brought up by the protestants-appellees, to wit, whether the appeal in question was directed against the decision or against the order of the court overruling the motion for new trial, we believe it is unnecessary for us to elaborate on the matter in view of the conclusion we have arrived at in this particular case.

Wherefore, the motion now under consideration is hereby granted, the appeal interposed in this case by the protestees-appellants dismissed, and the record of this case ordered returned to the court of origin for the execution of the judgment therein rendered. Without pronouncement as to costs. It is so ordered.

Torres and Felix, JJ., concur.

Motion granted; record of this case ordered returned to court of origin for execution of the judgment therein rendered.

[No. 955-R. June 16, 1948]

TUASON & SAMPEDRO, INC., plaintiff and appellee, *vs.* MANUEL GEMINEA, defendant and appellant

1. INTERNATIONAL LAW; COMMANDEERING OF PRIVATE PROPERTY DURING WAR; REQUISITION BY COMMANDEERING OFFICER NECESSARY; CONDITION IN REQUISITION OF TRANSPORTATION VEHICLES.—Under the rules of International Law, the commandeering of private properties is done by *requisitions* on the authority of the commander of the locality occupied (Hyde on International Law, Volume 3, p. 1891). Supposing, therefore, that a lawful requisition would have transferred the title to the truck in question to the Japanese Army, a question which we do not now decide, there being no evidence to support the existence of a lawful requisition, such contingency of transfer of title never took place. Private property must be respected even in case of war, and persons may not be deprived thereof except in the manner provided for under the rules of International Law. To sanction otherwise would be to sanction the rule of force. * * * Besides, the requisitioning of private property, especially of vehicles for the transport of persons or things, is subject to the condition that said properties must be restored and compensation for the use given when peace is made. (Hyde on International Law, Volume 3, p. 1894; Sec. III, Art. 53, The Hague Regulations of 1907.)
2. PROPERTY LOST OR STOLEN; POSSESSION; RIGHT OF PERSON ILLEGALLY DEPRIVED OF HIS PROPERTY TO RECOVER ITS POSSESSION; ARTICLE 464 CIVIL CODE; CASE AT BAR.—It is argued that the truck in question had never been stolen or lost, within the meaning of paragraph 1 of article 464 of the Civil Code. However, in the case at bar, there is no title that the appellant has acquired or can acquire by the mere possession of the truck, as the article cited simply says that possession is equivalent to title. One which is equivalent to title is not title itself. But even if it were, it is *subject to the right of the person illegally deprived thereof to recover its possession*

by express provision of the article relied upon (article 464, Civil Code). So that if the appellant acquired some right by virtue of his possession, the same is subordinated to the right of the appellee, as owner deprived thereof, to recover possession.

3. PLEADING AND PRACTICE; AMENDED ANSWER; INADMISSIBLE IF IT INTRODUCES A NEW ISSUE; SECTION 4, RULE 17, RULES OF COURT; CASE AT BAR.—An amended answer which has the effect of introducing a new issue, which would require the calling in of an additional defendant, the submission of new pleadings, and a new trial, is surely beyond the scope of an amendment after trial, which should only be to make the pleadings conform to the proof (section 4, Rule 17, Rules of Court) and is, therefore, inadmissible. The admission of the amended answer in question would have necessarily caused delay in the disposition of the case and would not have availed the defendant, because if judgment had been rendered against his vendee, not against him, he would have been required, nevertheless, to return the price he had received for the truck from the vendee (article 1478, Civil Code).

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Rosendo J. Tancincin and Amado A. Yateo for appellant.
Cardenas & Casal for appellees.

LABRADOR, J.:

The plaintiff brought this action to declare it the owner and entitled to the possession of a Chevrolet truck with motor No. TR-6166314, alleging that he purchased it from the Pacific Commercial Company in 1936 and was in possession and use thereof until March, 1942, when the Japanese Army, through its officers and soldiers, seized it with other trucks without its authorization, conformity, or consent; that defendant succeeded in registering said truck in his own name under permit No. 1461, by virtue of a false statement of ownership; that defendant has refused to return it to plaintiff, with damage to the latter in the amount of ₱3,000. At the time of the filing of the complaint, plaintiff corporation asked for a writ of manual delivery, but the same could not be executed as defendant alleged having already sold the truck to another. Defendant in his answer denied most of the allegations of the complaint on the ground that he had no knowledge of the facts therein set forth. He also denied the supposed falsity in the statement he submitted to secure the permit for the operation of the truck, and alleged, as special defenses, that he is the owner thereof, having purchased it in good faith and having been in peaceful possession thereof since said purchase. He prays in his answer that the complaint be dismissed and that he be declared the owner of the truck.

The Court of First Instance, after trial, found that the plaintiff bought the truck in question from the Pacific

Commercial Company on September 12, 1936, and was in possession until March, 1942, when the Japanese Army seized it; that from 1942 to 1944 the Japanese Army had been using it to transport lumber to and from the premises of the plaintiff; and that in March, 1945, after liberation, the plaintiff found the truck registered in the name of the defendant, to whom a license had been issued, on the strength of an affidavit signed by him. At the time of the trial, defendant sought to introduce evidence to prove that he had sold the truck to one Mariano Fulgencio, but upon objection by the plaintiff, said evidence was denied admission by the court on the ground that there was no allegation to that effect in the answer, and that this deprived the plaintiff of the opportunity to meet said defense and take proper measures for its protection. On the basis of the above facts the court rendered judgment for the plaintiff, requiring defendant to return the truck in question to the former, and upon failure to do so, to pay him the sum of ₱3,000, which the court found to be the value of the truck, with legal interest from the date of the filing of the complaint. Against the above judgment the present appeal has been prosecuted.

There seems to be no dispute about the above findings of the trial court. The first assignment of error made on this appeal is against its ruling that the truck, having been abandoned by the Japanese Army, should be returned to its alleged owner. It is alleged that it was error to hold "that the plaintiff corporation did not lose its right and title to the truck when the Japanese Imperial Army seized it as a war booty." This assignment of error brings up squarely before this court the question as to whether plaintiff lost its title to the truck in question when the Japanese Army seized the same. Appellant starts from the assumption that the Japanese Army "commandered the truck," and he argues that indemnity should be claimed from the army which commandeered it. The record does not support the assumption that the truck in question was commandeered. Under the rules of International Law, the commandeering of private properties is done by *requisitions* on the authority of the commander of the locality occupied (Hyde on International Law, Volume 3, p. 1891). Supposing, therefore, for the sake of argument, that a lawful requisition would have transferred the title to the truck to the Japanese Army, a question which we do not now decide, there being no evidence to support the existence of a lawful requisition, such contingency of transfer of title never took place. Private property must be respected even in case of war, and persons may not be deprived thereof except in the manner provided for under the rules of International Law. To sanction otherwise would be to sanction the rule of force.

Besides, the requisitioning of private property, especially of vehicles for the transport of persons or things, is subject to the condition that said properties must be restored and compensation for the use given when peace is made. This is the substance of the very citation of appellant's brief, Hyde on International Law, Volume 3, p. 1894. This principle is based on the following express provision of the Hague Regulations of 1907:

"ART. 53. * * *.

"All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, depots of arms and, generally, all kinds of war material may be seized, even though belonging to private persons, *but they must be restored at the conclusion of peace, and indemnities paid for them.*" (Italics supplied.) The Hague Regulations of 1907, Section III, Article 53.

It is, therefore, clear that the obligation of the Japanese Army after the war, even if it had lawfully requisitioned the truck, was to restore it to its previous owner and give indemnity for its use. Hence, the conclusion is inevitable that plaintiff was entitled to the possession of the truck upon the termination of the war. The first assignment of error is, therefore, without merit.

In his second assignment of error, the appellant contends that he acquired "absolute title to the truck when he bought it in good faith and for a valuable consideration." And it is argued that the truck in question had never been stolen or lost, within the meaning of paragraph 1 of article 464 of the Civil Code. We note, however, that there is no title that the appellant has acquired or can acquire by the mere possession of the truck, as the article cited simply says that possession is *equivalent to title*. One which is equivalent to title is not title itself. But even if it were, it is *subject to the right of the person illegally deprived thereof to recover its possession* by express provision of the article relied upon (article 464, Civil Code). So that if the appellant acquired some right by virtue of his possession, the same is subordinated to the right of the appellee, as owner deprived thereof, to recover possession.

The decision cited by the appellant in support of his argument reads as follows:

"It is a general principle that no man can be divested of his property without his own consent or voluntary act. * * *.

"Whoever claims to have acquired title to property, real or personal, through some agent or person not the real owner, must be prepared to show that the person of whom he purchased such property had authority to transfer the same. (Manning *vs.* Kaenan, 73 N.Y., 45; Meiggs *vs.* (158) Meiggs, 15 Rn. N.Y., 453; McColrick *vs.* Willists, 52 N.Y., 612; Succession of Boisblanc, 32 La Ann., 109; Loomis *vs.* Barker, 69 Ill., 360; Bertholf *vs.* Quinlan, 68 Iowa, 392; Bercich *vs.* Marye, 9 Nevada, 312; Voss *vs.* Roberston, 46 Ala., 483; Wheeler & Wilson *vs.* Givan, 65 Mo., 89; Switzer *vs.* Wilvers, 24 Kansas, 384; 36 Am. Rep., 259.)"

In the case at bar there was absolutely no showing that the person from whom the appellant purchased the truck

had any title or abode of title thereto. The appellant, therefore, never acquired any right by virtue of such purchase. The ruling of the trial court is, therefore, correct, and the supposed error is without merit.

The third assignment of error presents the argument that as defendant was no longer in possession of the truck at the time of the action for recovery of possession was filed, there can be no legal basis for the defendant's responsibility to return the same. The argument is premised on the assumption that the defendant never had possession of the truck. The fact, however, is that he was in possession of the truck at least from March, 1945, up to the time he supposedly sold it to Mariano Fulgencio on September 28, 1945. His answer implies that at the time of the bringing of the action he was in actual possession of the truck, for, as a matter of fact, he asked that he be declared the owner thereof (Record on Appeal, p. 7). His own evidence shows that he sold it to Mariano Fulgencio for the amount of ₱5,500 (See Exhibit 1). There is, therefore, no doubting the fact that the defendant had had possession and control of the truck, and that he had profited therefrom. With these facts in mind, appellant's assignment of error is clearly without any legal basis or foundation. The obligation to return the truck based on possession may no longer exist, but not the obligation to pay damages. This is expressly authorized by section 9, Rule 62 of the Rules of Court.

The fourth assignment of error is the supposed refusal of the trial court to admit the amended answer and the denial of the motion for reconsideration and new trial. The amended answer was presented after the decision of the trial court had been rendered, and it puts up a new defense, namely, that the truck had already been sold to one Mariano Fulgencio, Dagupan, defendant having been in possession of the truck only up to September 28, 1945 (Record on Appeal, p. 21). It is claimed that the admission of the amended answer was proper even after judgment, because there was no prejudice to the appellee, for at the time of the trial the plaintiff had already known that the truck had been sold to a third party. In answer to this argument, it may be stated that the knowledge that the plaintiff may have had that the truck is in the possession of a third person was immaterial, because such possession in the hands of a third person was not alleged in the answer of the defendant. The defendant's answer did not seek to evade responsibility on the ground that the property was no longer in his possession. The trial court, therefore, acted properly when it refused to admit evidence that the property had already been sold to a third person not a party to the action. The admission of the amended answer would have had the effect of introducing a new issue, which would have required the calling in of an additional defendant, the submission of

new pleadings, and a new trial. These are surely beyond the scope of an amendment after trial, which should only be to make the pleadings conform to the proof (section 4, Rule 17, Rules of Court). The admission of the amended answer would have necessarily caused delay in the disposition of the case and would not have availed the defendant, because if judgment had been rendered against his vendee, not against him, he would have been required, nevertheless, to return the price he had received for the truck from the vendee (article 1478, Civil Code).

Also in support of the fourth assignment of error, it is claimed that the truck in question is now in the possession of Mariano Fulgencio, and this fact is sought to be proved by Exhibit 1. It is to be noted, however, that this Exhibit was rejected by the court (t.s.n., p. 31) on the objection of the plaintiff. But even supposing, for the sake of argument, that Exhibit 1 should have been admitted, all that it would have availed the defendant would have been to relieve him from the obligation of returning the truck, as he alleges that he had sold it in good faith to a third person. The appellant has absolutely no ground to complain of the judgment rendered in this case, because the judgment is given in the alternative—for the defendant to return the truck or pay its value, which was found to be ₱3,000. We note that the defendant sold it for ₱5,500, and he has profited evidently from the sale by the respectable amount of ₱2,500. As adverted to above, if Mariano Fulgencio had been brought to court and required to return the truck to the plaintiff, it would have been the obligation of the appellant to indemnify him for the price (article 1478, Civil Code). In effect the ruling of the court in refusing the admission of the amended answer has actually benefited the defendant to the extent of ₱2,500. We, therefore, find no merit in the fourth assignment of error.

For all the foregoing considerations, we find that the judgment of the court *a quo* is in accordance with the law and the evidence, and we, therefore, affirm it in all respects, with costs against the appellant. So ordered.

Paredes and Abad Santos, JJ., concur.

Judgment affirmed.

[No. 1575-R. June 24, 1948]

CATALINA MORALES VDA. DE SYDDAYAO, for herself and as guardian of the minors FRANCISCA, CRESENCIO, CORAZON, and ANTONIO, all surnamed SYDDAYAO, and PAZ SYDDAYAO, plaintiffs and appellants, *vs.* ESCOLASTICA AGATEP and PEDRO B. AGUINALDO, defendants and appellees.

1. CONTRACT; EVIDENCE; WHEN A "PACTO DE RETRO" SALE MAY BE DECLARED A MORTGAGE.—The evidence necessary to justify a holding that a contract purporting on its face to be one of sale with repurchase is in fact one of mortgage is a clear

preponderance (*Cuyugan vs. Santos*, 34 Phil., 100; *Lim vs. Calaguas, CA*—G.R. No. 762-R; *De los Santos vs. Villamonte, CA*—G.R. No. 1409-R).

2. EVIDENCE; ORIGINAL WRITING LOST OR DESTROYED; SECONDARY EVIDENCE NOT OBJECTED TO, EFFECT.—Supposing that Exhibit D, which is a copy of the original letter which was not previously proved to have been lost, is incompetent as an independent piece of evidence (section 46, Rule 123, Rules of Court), the testimony of the plaintiff, not objected to opportunely, that the time granted for the repurchase is such as appears therein, having been admitted, said Exhibit D was at least admissible as part of said testimony.
3. PLEADING AND PRACTICE; RIGHT TO REPURCHASE IS NOT AN OBLIGATION; MORATORIUM LAW, NOT APPLICABLE.—The moratorium order is not applicable, for under the contract of sale with right to repurchase, plaintiffs never had or did have any monetary obligation compliance with which was suspended. They had a right to repurchase the property; not an obligation to do so. They had no money indebtedness; they had a real right to buy a property.

APPEAL from a judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Agcaoili & Agcaoili for appellants.

Matias E. Vergara for appellees.

LABRADOR, J.:

On November 16, 1937, plaintiffs sold to the defendants a parcel of land in Santa Cruz, Manila, and a house thereon for the total sum of ₱4,000, of which ₱656.73 was paid in cash to plaintiff and ₱3,343.27 assumed as mortgage on the property in favor of the National Loan and Investment Board. The vendors reserved to themselves the right to repurchase the property within two years. In 1941 a portion of the land and the whole house were expropriated for the construction of the Aurora Boulevard, but defendants repurchased the materials of the house and reconstructed it on the remaining portion of the land. The total investments of defendants amounted to ₱8,278.37 and if repurchase would have been effected, this would have been the total price, plus the agreed interest of 8 per cent from November 16, 1937 (Partial Stipulation of Facts, Record on Appeal, pp. 27-29, and Deed of Sale, Exhibit A, *Ibid.*, pp. 16-21).

The plaintiffs were not able to redeem the property within the two years stipulated. Thereafter defendants went to live in Zamboanga. There plaintiffs sent various letters, among which are Exhibits B and C. Plaintiff claims to have received defendants' answer to her letters asking for opportunity to repurchase the property. The most pertinent portions of this supposed letter read thus:

* * * * *

"After taking all the troubles of reconstruction our terms will be the same as the old contract. Reimbursement of all the money invested at 8 per cent interest plus all costs of improvements.

"Since we bought the house from you our records shows that we have invested ₱4,500 in all, plus the cost of all improvements ₱3,000. You can have the house at anytime with that term of the old contract. * * *." (Exhibit D, as explained in Appellants' Brief, p. 18.) (Italics supplied.)

The original letter, however, was not introduced in evidence, nor its loss or destruction proved. Objection to the supposed copy of the alleged letter was timely interposed during the trial.

The plaintiffs allege in their complaint that the contract between the parties was one of mortgage and that the deed of sale with *pacto de retro* did not represent the true and real intention of the parties to the agreement. It is, therefore, prayed that the contract between the parties be declared a mortgage and the defendants be compelled to render an account of the amounts that they had received as rents, together with the amount of ₱400 received in payment of the expropriated portion, and that the certificate of title that defendants may have secured in their name be declared null and void and cancelled. The defendants deny the main allegations and allege that the contract in question was a real sale with *pacto de retro*, that the right of plaintiffs to repurchase the property had expired long ago. The trial court found that the contract was one of sale with right to repurchase, that while the defendants may have verbally allowed the repurchase at any time, such could not be exercised beyond a period of four years, pursuant to article 1508 of the Civil Code, and, therefore, dismissed the complaint, with costs.

On the most important issue, we find that the evidence fully justifies the conclusion of the trial court that the contract was one of sale with repurchase and not of mortgage. The fact that the property was mortgaged when the conveyance was made, or that plaintiffs occupied a portion thereof, are unavailing against the fact that the terms of the deed are clear and explicit, that plaintiffs themselves in their letters speak of *repurchasing* the property (Exhibits B and C), that plaintiffs paid rents for the portion that they occupied, that plaintiffs received an amount in cash, in addition to the assumption by defendants of their (plaintiffs') indebtedness, that defendants have been paying the land taxes and have transferred the property on the tax records in their name, and that they secured the registration of their title. Certainly, plaintiff's uncorroborated testimony, that the contract was one of loan with mortgage, is unavailing against the language in their letters and their conduct, and the overwhelming facts and circumstances pointing to the contrary. The evidence necessary to justify a holding that a contract purporting on its face to be one of sale with repurchase is in fact one of mortgage is a clear preponderance (*Cuyugan vs. Santos*, 34 Phil., 100; Lim

vs. Calaguas, CA—G. R. No. 762-R; De los Santos *vs.* Villamonte, CA—G. R. No. 1409-R). The evidence submitted by plaintiffs fall far short of this requirement.

The next point in controversy is, Did the defendants extend the time for the repurchase, and did the plaintiffs bring this action within that time? The trial court assumed that defendants did extend the time. The testimony of plaintiff sufficiently proves the extension. While the supposed copy of the letter that defendants wrote in answer to plaintiffs letters was not sufficiently identified and neither was its presentation justified by a previous proof of the loss of the original, defendants did not deny that they had sent a letter allowing the repurchase as testified to by plaintiffs, neither did they deny that such letter contained the stipulation allowing the repurchase allegedly contained in the copy, Exhibit D. Supposing that Exhibit D is incompetent as an independent piece of evidence (section 46, Rule 123, Rules of Court), the testimony of the plaintiff, not objected to opportunely, that the time granted for the repurchase is such as appears in Exhibit D, having been admitted, said Exhibit D was at least admissible as part of said testimony.

The other part of the question that remains to be answered is, Did plaintiffs exercise the right (to repurchase) within the time fixed in August, 1941, as specified in Exhibit D? "Anytime with that term of the old contract" may mean any time within two years, the term of the old contract, or any time. Appellant contends that "anytime" means four years. So did the trial court hold, applying Article 1508 of the Civil Code, as no time has been expressly fixed. The four-year period is, therefore, to expire in August, 1945. But plaintiffs argue that said period was suspended by the moratorium order (Executive Order No. 25, as amended by Executive Order No. 32, series of 1945). We agree with the defendants that the moratorium order is not applicable, for, under the contract of sale with right to repurchase, plaintiffs never had or did have any monetary obligation, compliance with which was suspended. They had a right to repurchase the property; not an obligation to do so. They had no money indebtedness; they had a real right to buy a property. The trial court, therefore, did not err in its conclusion that the period for the exercise of the right to repurchase, as granted to plaintiffs in 1941, was not exercised within the time fixed.

For all the foregoing considerations, we find that the judgment appealed from is justified by the evidence and is in accordance with law, and we hereby affirm it, with costs against the appellants. So ordered.

Paredes and Abad Santos, JJ., concur.

Judgment affirmed.

[No. 2864-R. June 26, 1948]

ELEUTERIO MARAY, petitioner, vs. HON. EDMUNDO S. PICCIO,
Judge of First Instance of Leyte, MERCEDES MANZA
ET AL., respondents.

PLEADING AND PRACTICE; INTERLOCUTORY ORDER; POWER OF A JUDGE TO SET ASIDE AN INTERLOCUTORY ORDER, OR A FINAL ORDER WHICH HAS NOT BECOME EXECUTORY.—A judge of first instance before whom an action is pending has jurisdiction to set aside or modify, upon motion for reconsideration, an order in the same case entered by another Judge who is already presiding another Court, provided the said order is merely interlocutory or, if final in character, provided that the same has not yet become executory. (*Roxas vs. Zandueta*, 57 Phil., 14.)

ORIGINAL ACTION in the Court of Appeals. Certiorari and Prohibition.

The facts are stated in the opinion of the court.

Julio Siayngco for petitioner.

No appearance for respondents.

DIZON, J.:

This is an original petition for certiorari and prohibition filed by Eleuterio Maray against Edmundo S. Piccio, Judge of the Court of First Instance of Leyte, Mercedes, Carmen, Charito, Sagrario and Ramon, all surnamed Manza.

According to the petition the facts involved are as follows:

On March 25, 1942 Ramon V. Manza filed in the Court of First Instance of Leyte the complaint attached to the petition as Annex A with reference to the title of the real properties therein described, against Eleuterio and Alfonso Maray who, after being duly summoned, filed their answer thereto, now attached to the petition as Annex B. The case was docketed as Civil Case No. 5365 of said Court.

On July 27 of the same year Manza died survived by his widow, Mercedes Manza, and several children named Carmen, Charito, Sagrario and Ramon, Jr. On August 20 of the same year his heirs commenced intestate proceedings for the administration of his estate in the same court, docketed as Special Proceedings No. 2620. After due proceedings the widow, Mercedes Manza, was appointed administratrix.

On June 28, 1947 the Court of First Instance of Leyte, then presided by the Hon. Juan P. Enriquez, *motu proprio* dismissed civil case No. 5365, because of plaintiff's failure to prosecute the same.

On February 13, 1948 the heirs of the deceased Ramon V. Manza filed another action against Eleuterio Maray with reference to the title of the parcels of land subject matter of the previous case, the same having been docketed as civil case No. 356 of the same Court. On the 24th

of the same month and year Maray moved for the dismissal of the case upon the ground that, pursuant to the provisions of section 3, Rule 30 of the Rules of Court, the order of dismissal issued by Judge Enriquez in civil case No. 5365 on June 28, 1947 was a bar to the filing of the second action. On March 29th of the same year the Court, then presided by the Hon. Gustavo Victoriano, granted the motion for dismissal and dismissed civil case No. 356 with costs. Four days thereafter, namely, on April 2 of the same year the plaintiffs in the case aforesaid moved the Court to reconsider the order of dismissal of March 29th upon the ground that Mercedes Viuda de Manza having been appointed administratrix in Special Proceedings No. 2620, said Court had lost jurisdiction over the subject matter and, therefore, was without jurisdiction to dismiss civil case No. 356. In the absence of the Hon. Gustavo Victoriano, the said motion for reconsideration was heard before the respondent Judge, the Hon. Edmundo S. Piccio who, on April 13, 1948, set aside the order of dismissal mentioned heretofore and reinstated civil case No. 356. On April 1 of the same year Maray filed a motion for reconsideration of the order last mentioned upon the ground that the order of dismissal issued by Judge Victoriano was final in character and, therefore, appealable, which motion for reconsideration was denied on the 24th of the same month.

The grounds invoked in support of the present petition for certiorari and prohibition are stated in paragraphs 14 and 15 thereof which are of the following tenor:

"14. Que la orden del recurrido Hon. Edmundo S. Piccio de 13 de abril, 1948, reponiendo la mencionada causa No. 356 en su estado anterior, es de carácter interlocutorio y, por tanto es inapelable (Sec. 2, Rule 41, Rules of Court).

"15. Que el Honorable Juez recurrido Edmundo S. Piccio, al dictar su orden de reposición de la referida causa No. 356, de fecha 13 de abril, 1948, dejando sin efecto la orden de sobreseimiento con costas en contra de los demandantes (que según la sec. 2, Regla 41 de los Reglamentos es apelable) de fecha 29 de marzo, 1948, dictada por el Hon. Juez Gustavo Victoriano, en la misma causa, ha ejercido una jurisdicción apelada y, por tanto se ha extralimitado en el ejercicio de su jurisdicción sobre dicha causa No. 356 * * *

Whether the order of dismissal of June 28, 1947 made by Judge Enriquez in civil case No. 5365 was with or without prejudice; whether the same may still or may no longer be set aside under the provisions of Rule 38 of the Rules of Court; whether the order of dismissal of March 29, 1948 made by Judge Victoriano in civil case No. 356 and the order of April 13 of the same year made by the respondent judge setting aside the order of dismissal aforesaid are erroneous or not, are all questions we are not concerned with nor called upon to decide in the case before us. The present being a petition for

certiorari and prohibition, the only question before the Court is whether Judge Piccio acted within his powers in making the order of April 13, 1948.

It can not be disputed that the order complained of sets aside the prior order of Judge Victoriano dated March 29, 1948 dismissing civil case No. 356 with costs. It must be observed, however, that although said order of dismissal was final in character and, therefore, appealable, it had not yet become executory on April 2, 1948 when the plaintiffs in civil case No. 356 filed their motion for reconsideration, which was the one acted upon and granted by the respondent Judge. The true question, therefore, is whether a Judge of First Instance before whom an action is pending has jurisdiction to set aside or modify, upon motion for reconsideration, an order in the same case issued by another Judge who presided over the same Court previously. Upon this point we are clearly of the opinion that the question must be answered affirmatively provided that the order set aside had not yet become executory.

The claim that Judge Piccio had no legal authority or jurisdiction to set aside or modify the order of dismissal issued by Judge Victoriano because the said order is final and appealable has no merits. Under the facts of this case, whether the order of dismissal referred to was final in character or merely interlocutory is immaterial. If it was a final order, it was still subject to changes so long as it had not yet become executory. If it was merely interlocutory, a fortiori, the respondent Judge had full authority under the law to set aside or modify the same. The rule laid down in *Roxas vs. Zandueta*, 57 Phil., p. 14 is not correctly quoted by the petitioner. It is true that the orders therein in question were all of an interlocutory nature, but there is nothing in the decision of the Supreme Court to justify even the inference that had the said orders been final in character the same could not have been set aside or modified although they had not yet become executory. The ruling truly laid down by the Supreme Court in said case is precisely authority for the proposition that a Judge of First Instance before whom an action is pending has jurisdiction to set aside or modify, upon motion for reconsideration, an order in the same case entered by another Judge who is already presiding another Court, provided the said order is merely interlocutory or, if final in character, provided that the same has not yet become executory.

In view of all the foregoing, we are of the opinion that the petition under consideration is devoid of merits and should be, as it is hereby dismissed. Without pronouncement as to costs.

It is so ordered.

Montemayor, Pres. J., and Concepcion, J., concur.

Petition dismissed without pronouncement as to costs.

[No. 1159-R. June 30, 1948]

CESAR A. PERALTA, plaintiff and appellee, *vs.* TERESO A. DALIPE and ENCARNACION INVENTOR, defendants and appellants.

1. OBLIGATIONS AND CONTRACTS; PAYMENT, TENDER OF; "QUEZON EMERGENCY NOTES", THEIR VALIDITY AS TENDER OF PAYMENT, QUAERE.—It is doubtful if an offer of payment of a sum consisting of "Quezon Emergency Notes", which are not legal currency would have constituted a valid tender of payment.
2. INTERNATIONAL LAW; LEGAL REMEDIES, THEIR OPERATION WITHIN BELLIGERENT AREA NOT SUSPENDED BY WAR.—It has been settled by the decisions of the courts and well known writers on International Law that the existence of war does not suspend or affect the operation of legal remedies available to persons resident within the same belligerent area (67 C. J., 349), and that unexpected, burdensome and oppressive war conditions are insufficient to excuse failure to perform a contract to which one had bound himself unconditionally (U. S. *vs.* Varadero de la Quinta, 40 Phil., 84; Co Kim Cham *alias* Co Cham *vs.* Eusebio Valdez Tan Keh, 41 Off. Gaz., 1945, p. 779; International Harvester Co. *vs.* Hamburg-American Line, 42 Phil., 845).
3. MORTGAGE; REDEMPTION; REDEMPTION DEFINED; REDEMPTION IS A RIGHT OR PRIVILEGE, NOT AN OBLIGATION.—Redemption, as this term is used in law of Mortgages, is a transaction through which the mortgagor or one claiming in his right, by means of a payment or the performance of a condition, reacquires or buys back the value of the title which may have passed under the mortgage, or divests the mortgaged premises of the lien which the mortgage may have created (Ventura, Land Registration and Mortgages, p. 342, citing 42 C. J., 341; See also Reynolds *vs.* Baker, 46 Tenn. 221; Webb *vs.* Ritter, 60 W. Va. 1932; Murphy *vs.* Casselman, 24 N. D. 336; Long *vs.* King, 233 Ala. 379). In accordance with this definition, *a right or privilege, not an obligation*, is, therefore, created in favor of the mortgagor to redeem from the mortgagee the property mortgaged, title of which he forfeited because of his nonpayment of a debt. (Risma *vs.* Arcega et al., CA—G.R. No. 901-R.)
4. ID.; ID.; ID.; MORATORY LAW NOT APPLICABLE.—Even assuming, without admitting, for the sake of argument, that the defendants were under obligation to redeem those properties in question according to Executive Order No. 25, dated November 18, 1944, as amended by Executive Order No. 32 of March 10, 1945: "Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamation that such area has been freed from the enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government." The record shows that the defendants mortgaged them for a loan of P3,900 from the Philippine National Bank on September 5, 1938, which evidently places this case beyond the realm of the *moratorium*, because, as previously stated, defendants had an *option, or right, not an obligation*, to redeem those properties, which in the instant case they failed to exercise.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Cordova, J.

The facts are stated in the opinion of the court.

Leon P. Gellada for appellant.
Julian T. Hernaez for appellee.

TORRES, J.:

At the hearing of this case in the Court of First Instance of Occidental Negros and before the taking of the evidence, the parties made of record the following stipulation of facts:

"(a) That on September 5, 1948, the defendants constituted and transferred by way of first mortgage to the Philippine National Bank lots Nos. 1619, 1601, 1618, 246, 1625 and 2291 of the cadastral survey of Kabankalan, Occidental Negros, as security for the payment of a loan in the sum of ₱3,900 plus its interest;

"(b) That defendants having failed to pay totally said loan, the Philippine National Bank foreclosed the aforesaid mortgage under Act No. 3135 by virtue of a Special Power of Attorney which was duly registered and noted at the back of the corresponding titles of the above-mentioned lots under Entry No. 81740;

"(c) That the Philippine National Bank bought the properties in litigation at said foreclosure sale and the corresponding Deed of Sale was executed in favor of said Bank on November 8, 1941, and duly registered in the Office of the Register of Deeds of Occidental Negros; and

"(d) That on April 27, 1942, the Philippine National Bank sold its rights and interests in the properties in litigation to the plaintiff Cesar A. Peralta for the sum of ₱4,400, by virtue of a Deed of Sale (Exhibit A) which was duly registered in the Office of the Register of Deeds of Occidental Negros on April 28, 1942."

The herein defendants having failed to exercise their right of redemption within the period of one year from November 8, 1941, and the creditor bank having sold on April 27, 1942, to Cesar A. Peralta, its rights and interests in the properties mortgaged by them, the latter, on November 28, 1945, brought this suit against Tereso A. Dalipe and his wife Encarnacion Inventor, in order that from November 8, 1942, he be declared the sole and absolute owner of lots Nos. 1619, 1601, 1618, 246, 1625 and 2291 of the cadastral survey of Kabankalan, Occidental Negros, together with its improvements, in view of the fact that he, upon consideration, purchased from the Philippine National Bank all its rights and interests in said lots and their improvements. Plaintiff prayed that, during the pendency of this litigation, and upon the filing of a bond in an amount to be ascertained by the Court, a receiver be appointed who shall take charge of, and administer, the properties involved in this suit; that defendants be ordered to put the plaintiffs, or the receiver appointed for that purpose, in possession of each and all the properties described in the complaint; and that the defendant be ordered to pay the plaintiff for damages the sum of ₱10,000 and such additional damages as may be caused during the pendency of this litigation.

Upon the filing of the complaint on November 28, 1945, the Court of First Instance issued an order setting the petition of plaintiff for the appointment of a receiver for

hearing on December 7, 1945, but on December 5 of the same year defendants filed a motion to dismiss said complaint on the ground that it "states no cause of action." They contended that their legal right to redeem the properties in question within the period of one year had not lapsed yet, that plaintiff's right to the parcels of land in question had not become absolute and that, therefore, the action brought by plaintiff was "premature and is only in anticipation of the rights he would acquire after the one-year redemption period vested by law upon defendant shall have expired." On December 8, 1945, after hearing both sides, the Court gave defendants the opportunity until December 11, 1945, at 4:00 p.m., to put up a bond in the sum of ₱5,000 to prevent the appointment of a receiver, and overruled the motion to dismiss the complaint. The bond of ₱5,000 filed by defendants was, for various reasons, found unacceptable and was rejected, and the Court appointed a receiver who took charge of the properties under litigation.

On December 14, 1945, defendants filed their answer, and, in their special defenses, alleged that their one-year legal redemption period had not yet expired and it is only after the expiration of such period that plaintiff could be declared the absolute owner of six parcels of land under litigation and which were purchased by him from the Philippine National Bank; that, believing in good faith that their right to redeem those properties had not yet expired, defendants continued in the possession of those properties; that as possessors in good faith and not being aware of any flaw in their title, they are entitled to the fruits of those parcels of land; that granting, without admitting, that they are not possessors in good faith they are still entitled to recover from plaintiff the expenses incurred by them in the production of fish and in the preservation of those properties; that steps were taken by defendants to redeem the properties during the period of redemption by inquiring from the attorney of the bank, but that official informed defendants that those properties had been sold to plaintiff; and that defendants made arrangement with plaintiff to give him a mortgage on the lands in question for the sum of ₱4,400, which is the amount paid by him to the bank, but due to adverse circumstances that transaction did not materialize.

On January 7, 1946, defendants filed a third party complaint against the provincial sheriff and the Philippine National Bank, wherein they prayed that the sale of the parcels of land under litigation, made by the sheriff in favor of the bank, be declared null and void and contrary to law, and that should the original plaintiff be declared as the owner of the land in question that the third party defendants pay to the third party plaintiffs ₱50,000 as damages. The provincial sheriff, answering the third party complaint, after denying those allegations

of the third party complaint which did not affect him, averred that he did not intervene in the alleged sale of the lots in question, and that said sale was carried out by the acting manager of the Philippine National Bank pursuant to the provisions of Act No. 3155. On the other hand, third party defendant, Philippine National Bank, answering the third party complaint, as special defenses, alleged that—

"1. In accordance with the allegations of paragraphs 10 and 13 of the third party complaint to the effect that the third party plaintiffs went to the Bank to redeem their properties, the third party plaintiffs having thus acknowledged the regularity and validity of the sale, third party plaintiffs have no cause of action against the Bank are now stopped from questioning the validity and regularity of the public auction sale which was carried out and accepted parcel by parcel after the plaintiffs were notified by registered mail of the intended sale which was conducted at the municipal building of Kabankalan, Occidental Negros, at 10:00 a.m. on November 8, 1941 by the proper officer, and after due notices were duly posted for not less than 20 days before the sale at three public places at Kabankalan, and published once a week for three consecutive weeks in a newspaper of general circulation in the municipality and of the province, all in accordance with the provisions of Act 3135, and they cannot now be permitted to falsify or distort their actuations in connection with their alleged willingness to redeem their properties.

"2. The third party complaint fails to state a claim against third party defendant upon which relief can be granted because they failed to redeem, nor have they offered to do so within the statutory period from Cesar A. Peralta from whom they could have done so when they were advised to do so on May 13, 1942.

"Wherefore, this Honorable Court is respectfully prayed to render judgment dismissing the third party complaint and awarding to third party defendant Bank its costs. Third party defendant Bank further prays for such other equitable relief as may be just in the premises."

On September 3, 1946, when this case was called for hearing and plaintiff and defendants had manifested that they were ready therefor, the latter filed an amended answer. Plaintiff having objected to its admission on the ground that he was not given sufficient time to reply, and that apparently said amended answer, with its counter-claims for damages, was presented just to delay the hearing of this case, the Court, finding the opposition well founded, in an order issued on said date rejected said amended answer.

In another order of the same date the lower Court dismissed the third party complaint against the Philippine National Bank, after the counsel for said institution had called the attention of the Court to the fact that defendants had put up two conflicting defenses; for, while in their answer said defendants admitted the validity of the foreclosure sale made by the bank, in their third party complaint they claimed that such foreclosure sale "was null and void" because it was not done in accordance with law; in view of which the Philippine National Bank was at a loss as to the real issues in this case, because

if the allegations in their answer admitting the validity of the foreclosure sale are relied upon, there was no cause of action against said bank. When the Court called the attention of counsel to those incompatible allegations in open Court, they manifested that defendants would adhere to the allegation made in their answer sustaining the validity of the foreclosure sale and submitted the matter to the resolution of the Court which acted as already stated.

Upon the completion of the hearing of this case and before the Court handed down its judgment in this case, a verified motion for the reopening of the hearing was presented by plaintiff, who alleged that he was taken unawares when defendants submitted evidence to prove that the latter had the necessary amount with which to redeem the properties from the plaintiff and that the money was to be furnished by one Timoteo Laureano; that such alleged transaction was not alleged by defendants in their answer; that an attempt was made by plaintiff to contact Timoteo Laureano but, in view of the statement of defendant Dalipe that Laureano's whereabouts were then unknown, plaintiff did not insist in his motion for a continuance; but, subsequently, plaintiff was able to contact Laureano and upon learning from the latter the true facts, an affidavit was made by Laureano who under oath related in said document the role played by him in the alleged attempted payment to plaintiff of the sum of ₱4,500 for the redemption of the parcels of land involved in this litigation. In said affidavit, which is appended to the motion for reopening as Annex A, the affiant made statements which disproved the evidence of the defendants regarding the alleged tender of payment of the redemption money. According to Laureano he withdrew from the proposed deal when he found out that the information given him by defendants, that they still had one month's time to redeem the properties, was incorrect.

The Court of First Instance, after hearing the evidence, including that submitted when the case was reopened on December 17, 1946, rendered judgment declaring:

"(a) That the plaintiff is the absolute and exclusive owner of lots Nos. 1619, 1601, 1618, 246, 1625, and 2291 of the cadastral survey of Kabankalan, Negros Occidental, with their improvements;

"(b) That the defendants are hereby sentenced and ordered to pay jointly and severally to the plaintiff the sum of ₱3,000 as damages, with legal interest from the date of the filing of the complaint until fully paid;

"(c) That the possession of the above-mentioned lots and their improvements should be delivered to the plaintiff by the receiver appointed by this Court, who is hereby ordered to make such delivery after his accounts are duly approved by this Court; and
(d) That defendants should pay the costs of this suit."

Defendants perfected their appeal and, in the brief filed in their behalf, counsel would have the Court of Appeals reverse the judgment of the Court of First In-

stance of Occidental Negros on the strength of the following Assignment of Errors:

"I. The lower Court erred in declaring that there was no legal or valid tender of payment made by defendants-appellants within one year from November 8, 1941, the date of sale at public auction of the properties mortgaged and subject in this litigation.

"II. The lower Court erred in declaring that the period of one year within which the defendants-appellants have the right to redeem the properties sold at public auction from November 8, 1941, had already expired.

"III. The lower Court erred in declaring that the existence of war does not suspend the running of the redemption period nor the statute of limitations.

"IV. The lower Court erred in not declaring that, because of Executive Order No. 25 dated November 19, 1944, as amended by Executive Order No. 32, dated March 10, 1945, commonly called 'Debt Moratorium', the monetary obligation of defendants-appellants to redeem the properties mortgaged which was subsequently sold at public auction is temporarily suspended pending action by the Commonwealth government.

"V. The lower Court erred in declaring plaintiff-appellee, instead of the defendants-appellants, the owner of lots Nos. 1619, 1601, 1618, 246, 1625, and 2291 of the cadastral survey of Kabankalan, Occidental Negros with their improvements.

"VI. The lower Court erred in sentencing the defendants-appellants to pay jointly and severally the sum of ₱3,000 as damages, with legal rate of interest from date of filing the complaint until fully paid, and the costs of the suit.

"VII. The lower Court erred in not admitting the amended answer with counter-claim of defendants-appellants dated September 3, 1946."

In the light of all the above which is an exposition of all that has happened and been done in this case, and considering the respective contentions of the parties, Our inquiry shall be limited to the determination of the following questions, namely:

First: Did defendants-appellants make a valid tender of payment to redeem the properties in litigation within the period of one year after their sale at public auction from November 8, 1941, as provided by Act No. 3135, as amended by Act No. 4118?;

Second: Had the right of defendants-appellants to redeem those properties within the period of one year from November 8, 1941, already expired when plaintiff brought this action?; and

Third: Was the redemption period of one year from and after the date of the sale aforementioned, granted by section 6 of Act 3135, as amended by Act No. 4118, suspended by Executive Order No. 25, dated November 18, 1944, as amended by Executive Order No. 32 of March 10, 1945?

As regards the first question, the evidence (Exhibit A) discloses that on April 27, 1942, plaintiff, in consideration of the sum of ₱4,400, purchased from the Philippine National Bank all its rights, titles and interests in the properties involved in this litigation. Said purchase was, however, subject to the right of defendants to exercise their right of redemption within the period of one year

which expired on November 8, 1942. On April 28, 1942, plaintiff registered the deed of sale in the office of the register of deeds of Occidental Negros, but the New Transfer Certificate of Titles of each parcel were issued in his favor on July 3, 1943 (Exhibits C to G) after the expiration of the one year redemption period. Exhibit B, which covers lot No. 2291, was reconveyed to plaintiff only on January 21, 1946, because on account of the state of confusion in the office of the register of deeds, the original of that particular title could not be located.

It is claimed by defendants that, on May 12, 1942, they and one Timoteo Laureano, who had a bundle containing the sum of ₱4,500 in genuine currency went to the offices of the Philippine National Bank at Bacolod, to redeem the properties in question, but were informed by the attorney of said bank that the mortgaged properties had already been sold to the plaintiff. They, therefore, accompanied by Timoteo Laureano, visited the plaintiff and offered to redeem from him those properties upon payment of the sum of ₱4,500 which Laureano had given them. Plaintiff, upon being informed of the supposed transaction between defendants and Laureano, offered appellants a similar arrangement, by executing in favor of defendants a deed of mortgage over the same lots for the sum of ₱4,500 with interest at 8 per cent per annum for a period of 2 years. According to appellants, they accepted plaintiff's proposition and Laureano was prevailed upon to withdraw from the transaction by reimbursing his expenses amounting to ₱60. However, the said contract mortgage was never executed because the plaintiff did not fulfill his above-mentioned promise.

The above described steps supposedly taken by appellants were emphatically denied by Timoteo Laureano. This witness admitted that he was willing to help the defendants by furnishing them the sum of ₱4,500 with which to redeem the properties in question, but he did not, as alleged by defendants, carry with him said amount of money in a bundle. He thought it best to deposit the money with the bank and to issue his check for the amount of the redemption, in case that the bank would allow the defendants to redeem those properties. According to Laureano, he learned for the first time at the bank's office that those properties had been sold to the plaintiff, and that, contrary to defendants' assertion, they did not have one month within which to redeem them. He became disgusted, withdrew from the transaction and returned to defendant Dalipe the originals of the exhibits 2 and 3, and did not go with them to the house of the plaintiff.

If the defendants really made an offer to the plaintiff to pay him the sum of ₱4,500 on May 12, 1942, and redeemed those properties, it is, as the lower Court adverts, very significant that no mention whatsoever was

made of that very important fact in their answer of December 14, 1945.

Plaintiff Cesar A. Peralta testified that he had authorized his father, Jose Peralta, to receive the redemption money at any time up to November 2, 1942, and the latter stated that defendants visited at his residence at Kabankalan in the month of July, 1942 to inquire if he was really authorized to receive the redemption money, to which he replied in the affirmative. The evidence further shows that, during the Japanese occupation of that province, the people could travel from one place to another unmolested, so that if defendant had really intended to accomplish their alleged intention to redeem those properties, they could have either in person or through a messenger, sent the money to the plaintiff in Bacolod or to his father in Kabankalan. The evidence is silent as regards any intent or attempt made by defendants on or before the liberation of the province, to deposit with the clerk of court, the sheriff or a notary public the amount in legal tender for the redemption of those properties.

Defendants further contended that after the liberation of the City of Bacolod on March 29, 1945, they offered to pay the plaintiff the sum of ₱5,000 in "Quezon Emergency Notes." It is doubtful, as the Court correctly says, if an offer of payment of a sum consisting of those notes which are not legal currency would have constituted a valid tender of payment.

Premised on the above, we agree with the lower Court that defendants did not make a legal tender of payment within one year from the sale at public auction of the properties in question on November 8, 1941, nor at any time thereafter up to the filing of the complaint in this case.

The second question was discussed and decided by the lower Court when in its order of December 5, it overruled the motion to dismiss the complaint filed by the defendants. It was contended by them that the outbreak of the war had suspended the period within which they could redeem the property; that if their right to redeem started to run on November 8, 1941, then they had still a period of 11 months within which to redeem the property, starting from August 15, 1945, when the war formally ended (defendants motion to dismiss, Record on Appeal, pp. 10-12).

It has been settled by the decisions of the courts and well known writers on International Law that the existence of war does not suspend or affect the operation of legal remedies available to persons resident within the same belligerent area (67 C. J., 349), and that unexpected, burdensome and oppressive war conditions are insufficient to excuse failure to perform a contract to which one had bound himself unconditionally (*U. S. vs. Varadero de la Quinta*, 40 Phil., 48; *Co Kim Chama Co Cham vs.*

Eusebio Valdez Tan Keh, 41 Off. Gaz., 1945, p. 779). In International Harvester Co. vs. Hamburg-American Line (42 Phil., 845), the Supreme Court held:

"The outbreak of war between two powers does not abrogate a contract between a subject of one of the belligerents and the subject of a neutral power; and though the contract may thus become impossible of exact performance, it will be given effect if it can by any reasonable construction be treated as still capable of being performed in substance."

Defendants-appellants made an effort to impress the Court with their unfortunate plight during those days of Japanese occupation which, according to them, unavoidably prevented them from accomplishing their desire to redeem in due time the properties in question, and in that connection compared the conditions surrounding them with the more fortunate situation of the plaintiff who happened to live in better conditions or circumstances. The excuses offered by defendants in their brief for their failure to carry out their purposes to redeem those properties, while they might arouse sympathy, would certainly not furnish a legal defense. In this connection, we make our own the following remarks of the lower Court.

"But, even granting that the whole period during the Japanese occupation of Occidental Negros should be deducted from the one year period of redemption provided for by Act No. 3135, it is evident that, counting from November 8, 1941, to May 21, 1942 (when the Japanese landed in Occidental Negros), six months and thirteen days had already elapsed and counting again from March 29, 1945 (the date when Occidental Negros was liberated by the American Forces), the full year of redemption from May 30, 1945, when the Province of Occidental Negros was declared free from enemy control, by Presidential Proclamation, the full year of redemption should expire on November 13, 1945. The complaint in this case was filed on November 28, 1945. It can also be stated that up to this date the defendants had not consigned with the Clerk of Court the necessary amount for the redemption of the above-mentioned properties."

Finally, as regards the third question, counsel for defendants, arguing this case before us would make this Court accept the theory that *redemption being an obligation*, his clients are entitled to the benefits of the Moratorium which has been proclaimed in this country by virtue of Executive Order No. 25, dated November 19, 1944, as amended by Executive Order No. 32 of March 10, 1945. In other words, according to counsel, his clients being *duty bound* to redeem from the Philippine National Bank, or its successors in interest, the plaintiff herein, the properties in litigation, by the advent of the war, they become entitled to the benefits of the Moratorium enforced in these Islands by the above-mentioned executive order.

Redemption, as this term is used in the law of Mortgages, is a transaction through which the mortgagor or one claiming in his right, by means of a payment or the performance of a condition, reacquires or buys back the

value of the title which may have pass under the mortgage, or divests the mortgaged premises of the lien which the mortgage may have created (*Ventura, Land Registration and Mortgages*, p. 342, citing 42 C. J. 341; See also *Reynolds vs. Baker*, 46 Tenn. 221; *Webb vs. Ritter*, 60 W. Va. 1932; *Murphy vs. Casselman*, 24 N. D. 336; *Long vs. King*, 233 Ala. 379). In accordance with this definition, a *right or privilege, not an obligation*, is, therefore, created in favor of the mortgagor to redeem from the mortgagee the property mortgaged, title of which he forfeited because of his non-payment of a debt. In *Risma vs. Arcega et al.*, (CA—G.R. No. 901-R, decided on June 17, 1948), this Court, dealing with a similar question, said that—

“It goes without saying that the suspension under certain circumstances of the operation of the statute of limitations never encroaches upon any *acquired or vested right* of the person against whom the suspension adversely affects, while the suspension or extension of the period for redemption, which is not an *obligation* but an option of the judgment debtor, may curtail the *right* of the purchaser at the execution sale to retain the property for the acquisition of which he bothered himself to bid.”

Furthermore, even assuming, without admitting, for the sake of argument, that these defendants were under obligation to redeem those properties, according to Executive Order No. 25, dated November 18, 1944, as amended by Executive Order No. 32 of March 10, 1945:

“Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other monetary obligations entered into in any area after declaration by Presidential Proclamation that such area has been freed from the enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government.”

The record shows that the defendants mortgaged them for a loan of ₱3,900 from the Philippine National Bank on September 5, 1938, which evidently places this case beyond the realm of the *moratorium*, because, as we have stated, appellants had an *option, or right, not an obligation*, to redeem those properties, which in the instant case they failed to exercise.

Having thus solved those three question, it is our opinion that the Court *a quo* did not commit any of the errors alleged by defendants.

With regard to the claim of plaintiff that defendants, jointly and severally, be ordered to pay the sum of ₱10,000 as damages and such additional damages as may be caused during the pendency of this litigation, we have carefully examined the evidence touching this point and found that the findings of the trial Judge in the premises are well supported by such evidence. Said the lower Court:

“In accordance with article 455 of the Civil Code, the defendants are bound to pay to the plaintiff the fruits or products received by them and those which the lawful possessor would have received, and shall only have the right to be reimbursed for the necessary

expenses incurred in the preservation of the properties. The preponderance of evidence shows that the defendants produced a good amount of fish from the fishpond existing in one of the lots under litigation and that they sold said fish at relatively good prices. The evidence presented by the plaintiff through his witnesses, partly confirmed by the testimony of defendant Dalipe, has established the fact that during the months of January to March, 1943, both inclusive, and also during the months of October to March, of the following years up to January 1, 1946, when the receiver took possession of said fishpond, at least during 10 days of each month, or be it during the new and full moons, a good catch of fishes was made. Defendant Dalipe testified that the value of fishes sold during the years 1942 to 1945 was from ₱3,000 to ₱4,000 annually. Based on a minimum income of ₱3,000 yearly, the total amount will be ₱9,000 for the years 1943, 1944 and 1945, from which we would deduct the necessary expenses incurred in the preservation of the fishpond which the defendant Dalipe fixed at ₱2,000 per year. Therefore, deducting from the gross income of ₱9,000, mentioned above, the necessary expenses at the rate of ₱2,000 a year, or the sum of ₱6,000 for the whole period from November, 1942 to December, 1945, inclusive, it leaves a net income of ₱3,000 for the period in which the defendants held the properties in litigation as possessors in bad faith."

For the reasons stated in the above quoted paragraph, and since the plaintiff did not question the findings of the lower Court in this respect, we see no justification in distributing the same.

In view of all the foregoing, we therefore, affirm *in toto* the judgment of the lower Court, with costs against the appellants. So ordered.

Endencia and Felix, JJ., concur.

Judgment affirmed.

[No. 1063-R. July 2, 1948]

CONCEPCION BATISANAN ETC., ET AL., plaintiffs and appellants, *vs.* VALENTIN BATISANAN, defendant and appellee.

EVIDENCE; TAX DECLARATIONS; PROBATIVE VALUE OF TAX DECLARATION AS TO ITS CONTENTS.—While declarations of real property submitted for the purpose of complying with the provisions of the assessment law (Commonwealth Act No. 530), are *prima facie* evidence of possession of the land described therein, they do not constitute, however, an irrefutable and unassailable proof of the accuracy and truthfulness of the data and description given therein by the declarant of the property whose ownership is claimed by him (*Evangelista vs. Tabayuyong*, 7 Phil., 607; *Casimiro vs. Fernandez*, 9 Phil., 567).

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Juan Jamora, Jr. for appellants.

Basilio Sorioso for appellee.

TORRES, J.:

By agreement of the parties, this case (No. 220) and another one (No. 194) of the Court of First Instance of

Iloilo, were tried jointly because they are closely related, the parties are the same and the property affected is also the same. But after trial, said Court rendered judgment as follows:

"(a). En el asunto civil No. 220 se declara que 14 hectareas, 50 areas y 74 centiareas del terreno descrito en el párrafo 4 (inciso 'A') de la demanda son de la propiedad de Valentín Batisanan en Free-Patent certificado original de título No. 614 de la oficina del registrador de títulos de Iloílo;

"(b). Se declara que la porción restante de 12 hectareas y 20 areas, aproximadamente, del terreno descrito en el párrafo 4 (inciso 'A') de la demanda, así como la totalidad del terreno descrito en el inciso 'B' de dicho párrafo 4 de la demanda, son de la propiedad de los herederos del finado Floriano Batisanan en las siguientes participaciones individuales: 1/4 parte proindiviso para el demandante Valentín Batisanan, 1/4 parte proindiviso para el demandado Enrico Batisanan, 1/4 parte proindiviso para el demandado Mariano Batisanan, 1/12 avas partes proindiviso para la demandada Concepción Batisanan, 1/12 avas partes proindiviso para el demandado Luis Batisanan, y 1/12 avas partes proindiviso para el demandado Macario Batisanan;

"(c). Se sobresee el asunto civil No. 194 arriba intitulado;

"(d). Ambos asuntos civiles Nos. 194 y 220 sin especial pronunciamiento en cuanto a las costas."

In case No. 220 now before us, plaintiffs prayed that the two parcels of land described in paragraph 4 of their complaint and which originally belonged to Floriano Batisanan, who died in 1909, leaving as his near relatives the defendant, his brother, and his nephews and nieces, be declared to have been inherited equally by his brothers or their successors in interest and equally divided among them, as follows:

"1/4 to defendant Valentín Batisanan;

"1/4 to plaintiffs Concepcion, Luis and Macario, all surnamed Batisanan;

"1/4 to Enrico Batisanan; and

"1/4 to Mariano Batisanan;"

That in order to avoid further disagreements between them, all the parties be required to submit an equitable distribution of their inheritance; and that defendant be ordered to render an accounting of this "continuing and subsisting trust from 1909 up to the present, over two parcels of land in litigation," which at least can produce nearly 35 *bultos* of *palay* annually.

Defendant, answering the complaint, averred that he has been in continuous possession of those two parcels of land for over 45 years "as owner to the exclusion of the whole world and adverse to all other claimants," and that he "has never recognized the state of co-ownership over the same on his part and that of plaintiffs," and that he "denies their right to ask for partition of the said parcels of land"; wherefore, he prayed that he be declared the absolute owner of the two parcels of land in question and absolved of the complaint.

From the evidence submitted, it is gathered that Floriano Batisanan died in 1909 without descendants or descendants. He had, however, four brothers named Eduarda, Julio, Luisa and Valentin. Eduarda died leaving one son, Enrico Batisanan, who survived her and is one of the plaintiffs herein; Julio is survived by his children named Concepcion, Luis and Macario; Luisa is survived by one son, the witness named Mariano Batisanan; Valentin Batisanan is the defendant in this case. When Floriano Batisanan died, he was the owner of two parcels, one measuring 24 hectares, 70 ares and 35 centiares, valued at ₱2,750, and another of about 7 hectares and valued at ₱700. Those two parcels of land were formerly owned by Basilio Batisanan, the grandfather of the witness Mariano Batisanan and his co-plaintiffs, and upon his death they were administered by Valentin Batisanan, the defendant herein, in his own name and in behalf of his above-mentioned nephews and nieces. Several tenants worked on those lands and, subsequently, there were differences and disagreements between the defendant and the plaintiffs which gave rise to this litigation.

It appears that as early as the Spanish regime, Valentin Batisanan had been in possession as owner of a parcel measuring 14 hectares, 50 ares and 74 centiares, located in the barrio of Macalban of the municipality of Concepcion, Iloilo. This piece of land is contiguous to the larger lot under litigation, and it is covered by a Free Patent issued on October 24, 1935, registered in the Office of the Register of Deeds of Iloilo, which issued Certificate of Title No. 614 (Exhibit 1).

It is claimed by plaintiffs that the larger parcel described in paragraph 4 of their complaint and formerly owned by Floriano Batisanan, measured 24 hectares, 70 ares and 74 centiares. We have examined their documentary proofs and found that Floriano Batisanan, upon his death, did not own a piece of land larger than that described in their Exhibit C, which is tax declaration No. 493, still in the name of said deceased and covering a lot of 14 hectares, 26 ares and 62 centiares.

While declarations of real property submitted for the purpose of complying with the provisions of the assessment law (Commonwealth Act No. 530), are *prima facie* evidence of possession of the land described therein, they do not constitute, however, an irrefutable and unassailable proof of the accuracy and truthfulness of the data and description given therein by the declarant of the property whose ownership is claimed by him (*Evangelista vs. Tabayuyong*, 7 Phil., 607; *Casimiro vs. Fernandez*, 9 Phil., 567). In the instant case, we, therefore, agree with the trial Judge that the measurement given in said Exhibit C cannot be made the basis of the claim of plaintiffs.

After a careful analysis of the evidence, the lower Court came to the following conclusion, within which we agree. It says:

"De donde el juzgado concluye que de las 24 hectareas, 70 areas y 74 centiareas mencionadas en el inciso A del párrafo 4 de la demanda, hay que descontar las 14 hectareas, 50 areas y 74 centiareas cubiertas por el Free-Patent de Valentín Batisanan, de modo que lo que resta para los herederos de Floriano Batisanan son aproximadamente 12 hectareas y 20 areas. La totalidad del terreno descrito en el inciso B del párrafo 4 de la demanda pertenece a los herederos del referido Floriano Batisanan."

Failing, therefore, to see any reason to disturb the findings of the trial judge, we, therefore, affirm the judgment appealed from, with costs against appellants. So ordered.

Endencia and Felix, JJ., concur.

Judgment affirmed.

[No. 1901-R. July 6, 1948]

HEIRS OF PEDRO WAOYAN, HEIRS OF BALTAZAR DINGAYAN, PONCIO ELI et al., plaintiffs and appellees, vs. DATIVA CRISTOBAL and ERNESTO ABELLERA, defendants and appellants.

1. WORKMEN'S COMPENSATION LAW (ACT NO. 3428); TERM "INDUSTRIAL EMPLOYMENT" CONSTRUED; CASE AT BAR.—According to section 39, paragraph (d) of Act No. 3428 the term "industrial employment," with reference to private employers, refers only to "employment or work at a trade, occupation or profession exercised by an employer *for the purpose of gain*." In defining the terms "employer" and "laborer" the same act makes it clear that its provisions shall apply to them only if their relation falls under the term "industrial employment." In other words, it is necessary that the employer be engaged "at a trade, occupation or profession * * * *for the purpose of gain*" and that the laborer be employed by him at such trade, occupation or profession. In the instant case it seems clear that the plaintiffs Waoyan, Dingayan and other companions were not employed by the defendants in connection with any trade, occupation or profession exercised by the latter for the purpose of gain. The employment to which they were subjected is not the "industrial employment" contemplated by the Workmen's Compensation Act; thus, their employer could not be classified as "industrial employer" and they also could not be classified as "industrial employees." (See 71 C. J., p. 372.)
2. EMPLOYERS' LIABILITY ACT (ACT NO. 1874); CASES TO WHICH IT APPLIES; EMPLOYER'S NEGLIGENCE, DAMAGES CAUSED BY; EMPLOYER'S LIABILITY; CASE AT BAR.—The Employers' Liability Act, within the purview of which the present case falls, applies to any employee, except domestic servants or agricultural laborers (Act 1874, secs. 1 and 9). It applies likewise to cases that do not fall under the Workmen's Compensation Act because the gross income of the employer for the year immediately preceding that when the accident took place was less than ₱20,000 (Act 3428, as amended by sec. 14, Act No. 3992). In the case at bar it has been shown that the employees suffered personal injury through the negligence of the

driver of the truck of the employer—a fact established by the driver's conviction in criminal case No. 34 of the lower court under the provisions of paragraph 2, section 6 of Act No. 3992. The driver's negligence in the absence of any circumstance exempting his employer from liability therefor must be the latter's negligence also in the eyes of the law. Consequently, under the provisions of section 1, first paragraph, in relation to those of section 3 of the Employers' Liability Act, the employees who suffered physical injuries and the heirs of the deceased Waoyan and Dingayan are entitled to recover damages from their employer.

APPEAL from a judgment of the Court of First Instance of Baguio. Concepcion, J.

The facts are stated in the opinion of the court.

Domondon & Salvosa for appellants.
Fangonil & Lardizabal for appellees.

DIZON, J.:

This is an appeal from the decision rendered by the Court of First Instance of Mountain Province on August 28, 1947, whose dispositive part is as follows:

"For all the foregoing consideration, the Court orders the defendants Dativa Cristobal and Ernesto Abellera to indemnify jointly and severally the plaintiffs, as follows:

"To the heirs of Pedro Waoyan	₱3,000.00
"To the heirs of Baltazar Dingayan	3,000.00
"To Benito Gat-iluan (<i>alias</i> Cat-iluan)	500.00
"To Paulino Pitong	150.00
"To Poncio Eli	100.00
"To Mariano Palpal	100.00
"To Patricio Gumawi	100.00
"To Luis Pimoon	100.00
"To Rafael Lakguing (<i>alias</i> Laong)	100.00

"These amounts are the result of the computation made by the undersigned based upon the individual earnings of these sawyers immediately before the accident as provided and indicated in the Workmen's Compensation Act, taking into consideration their injuries as established by the resident physician of the Baguio General Hospital. If the defendants or anyone of them, however, pay the indemnity to the plaintiffs within thirty days from the date they are notified of this decision, as provided by law, 20 per cent discount of all the said amounts shall be granted them.

"There being no evidence as to the right and injury of plaintiff Kayang, no indemnity is adjudicated in his favor in this case.

"The right of the plaintiffs to collect by court action the unpaid balance of their salaries or pay for the timber cut and sawed by them for the defendants is hereby reserved to them. This balance not having been claimed in the complaint cannot be granted to them in this decision.

"The defendants shall also pay the costs."

In their amended complaint dated September 10, 1946 the plaintiffs heirs of the deceased Pedro Waoyan and Baltazar Dingayan, Poncio Eli, Benito Gatiluan, Luis Pimoon, Patricio Gumawi, Mariano Palpal, Paulino Pitong, Rafael Lakguing, Federico Abenes and Kayang claimed indemnity from defendants Dativa Cristobal and Ernesto

Abellera, in accordance with the Workmen's Compensation Act, as amended, in connection with the death of said decedents and certain physical injuries suffered by the other plaintiffs, upon the ground that while Waoyan, Dingayan and said plaintiffs were employed by the defendants and while they were in the performance of their duties, the first two met their death and the others suffered physical injuries through no fault of their own but through the fault and negligence of the defendants and their agents.

The defendants, in separate answers, denied specifically the material allegations of the amended complaint and alleged that Waoyan, Dingayan and their companions were not in their employ at the time of the accident; that they did not nor did their agents order them to come to Baguio on the day of the accident; to the contrary, they succeeded in boarding the truck wherein they met the accident by employing threats and intimidation upon the driver thereof; that their case does not fall under the Workmen's Compensation Act, and finally, that the death of Waoyan and Dingayan and the injuries suffered by the other plaintiffs were due to their own negligence. Defendant Abellera further alleged that he had no interest whatsoever in the lumber concession nor in the building under construction belonging to his co-defendant, in connection with which the plaintiffs were employed.

On the day of the trial plaintiff Abenes renounced his claim and testified for the defendants. After due trial the judgment already referred to was rendered and the defendants appealed. They now contend that the lower court committed the following errors:

I

"The trial court erred in holding that the plaintiffs-appellees were ever the employees of the defendants-appellants.

II

"The trial court erred in holding that the plaintiffs-appellees rode in the truck of the appellant Dativa Cristobal at the instance of the defendants-appellants, and in not holding the said plaintiffs-appellees notoriously negligent in riding in the said truck.

III

"The trial court erred in holding that the deaths and injuries complained of by the plaintiffs-appellees arose out of and were suffered by them in the course of their employments.

IV

"The trial court erred in holding that this case falls under the Workmen's Compensation Act.

V

"The trial court erred in admitting the documentary Exhibits of the plaintiffs-appellees, particularly Exhibits D, O, O-1, O-2, P, Q, T, U, and U-1.

VI

"The trial court erred in holding the defendant Ernesto Abellera jointly and severally liable with his co-defendant-appellant Dativa Cristobal.

VII

"The trial court erred in awarding to the plaintiffs the unreasonable, unjustified and excessive damages contained in the decision now appealed from."

After a careful review of the evidence we find that the preponderance thereof has established the following:

The appellant Abellera, a duly licensed physician in active practice in the City of Baguio, owns a lumber concession located at Tuba and is a partner of his co-appellant in a drugstore business established in said city. The appellant Cristobal, on the other hand, is engaged in business, owns a lumber concession located at Km. 52 Mountain Trail, Mountain Province, for which she has a permit duly issued by the Bureau of Forestry, and is a part owner of the drugstore already mentioned. She and appellant Abellera's family live in one and the same house in Baguio.

In the month of February, 1946 the appellant Cristobal started the construction of a building of strong materials on a lot near the public market of Baguio leased to her by said city. When she tried to purchase some lumber from Ricardo Mamac—from whom she used to get such material before—the latter informed her that he had none available at the time. They agreed, therefore, that Mamac would cut trees from her own concession, saw them right then and there into finished lumber of the size she needed and pile them near the roadside from where she would have them hauled in her truck to Baguio. Pursuant to this agreement Mamac engaged the services of Waoyan, Dingayan and the other plaintiffs, either for ₱3 a piece of sawed timber of the size required by appellant Cristobal or at ₱0.20 per board feet, and without loss of time took them to the latter's lumber concession at Km. 52. They started their work on February 23 and on March 1 a truck was sent thereto to haul to Baguio 98 pieces of finished lumber of the size agreed upon and two unsawed "trocillos." Before that day, however, the appellant Cristobal had left for Manila, after requesting her housemate, the appellant Abellera, to look after her interests, especially in connection with her contract with Mamac and the latter's men, leaving with him the sum of ₱500 to take care of her obligations thereunder. Consequently, upon the delivery of the truckload of lumber and of the two "trocillos" just mentioned, accounts were settled between Abellera and Ricardo Mamac to whom the former delivered the sum of ₱284 in full payment of the aforesaid material. It appears that Mamac had planned to go to Km. 52 to pay the laborers their wages, but having met Waoyan in Baguio where he was buying some blankets and other necessities, he took

advantage of the occasion to deliver to him the money due to him and his companions. The record is not conclusive as to the exact amount delivered by Mamac to Waoyan—although Mamac claims to have given to the latter the full amount of ₱284—but it is a fact that upon his return to Km. 52, Waoyan informed his companions that he had received ₱180 from their employer to pay their wages and the amount was actually divided among them at ₱20 each. Believing that this amount was less than what they were entitled to, the laborers protested to Waoyan who told them that the balance of their wages would be paid later.

On March 5 a Chevrolet truck bearing plate No. D-6381 owned by the appellant Cristobal and driven by her driver Nicolas Costales was sent to Km. 52 to haul whatever sawed lumber was ready to be taken to Baguio. On that occasion 76 pieces of sawed lumber of the size agreed upon and two unsawed "trocillos" were loaded. When the truck started on its way to Baguio, however, it carried not only the lumber aforesaid but also Waoyan, Dingayan and the other plaintiffs. The latter's version regarding this point is that on that date Waoyan, who was apparently acting as their capataz, and the manager and checker of the appellants ordered them to board the truck and go to Baguio for the purpose of sawing the four "trocillos" mentioned heretofore, while the appellants' contention is that the laborers had become disgusted and had decided to leave their work and, therefore, by means of threats and intimidation they forced the driver of the truck to take them on board. We are not inclined to believe either version. It is more probable that in view of the fact that they had not been fully paid for the first load and no money was brought to pay them for the second load, the laborers had decided to go to Baguio and try to collect their wages, or at least to find out what was the matter.

It is not disputed that at Km. 45 the Chevrolet truck mentioned heretofore fell into a deep ravine, this accident having caused the death of Waoyan and Dingayan and the physical injuries suffered by the other plaintiffs, as well as the loss of some of the lumber loaded in it. As a consequence of this accident Costales was prosecuted for homicide and physical injuries through reckless imprudence and was found guilty thereof, the offended parties, however, having reserved their right to institute the corresponding civil action for damages.

After those who merely suffered physical injuries had been discharged from the Baguio General Hospital appellant Abellera paid them an additional sum of ₱100, while appellant Cristobal paid ₱200 to the heirs of Waoyan to defray the expenses of transferring his corpse to his hometown and those incident to his funeral. The appellants, however, disclaimed liability for, and refused to

pay any indemnity or compensation under the Workmen's Compensation Act. One of the main questions we have to decide is whether or not the present case falls within the purview of Act No. 3428, as amended, commonly known as the Workmen's Compensation Act, whose provisions apply only "to all industrial employees hereinafter specified." (Act No. 3428, sec. 1). On the other hand, according to section 39, paragraph (d) of said act the term "industrial employment," with reference to private employers, refers only to "employment or work at a trade, occupation or profession exercised by an employer *for the purpose of gain*.". In defining the terms "employer" and "laborer" the same act makes it clear that its provisions shall apply to them only if their relation falls under the term "industrial employment." In other words, it is necessary that the employer be engaged "at a trade, occupation or profession * * * *for the purpose of gain*" and that the laborer be employed by him at such trade, occupation or profession.

Upon the facts we have found it seems clear that Waoyan, Dingayan and their companions were not employed by the appellants in connection with any trade, occupation or profession exercised by the latter for the purpose of gain. In other words, they were not "industrial employee." We are of the opinion, however, that the relation of employer and employee existed directly between the appellant Cristobal, on one hand, and Waoyan and his companions, on the other. Mamac was, in truth, but a mere overseer of said appellant for whom and on whose behalf he engaged the services of the laborers. As a matter of fact there is no claim or pretense that he had ever been an independent contractor engaged in the business of cutting timber from lumber concessions. He himself received compensation from appellant Cristobal, although not in cash. For the part he was to discharge in connection with the contract, he was to receive the slabs (trans. 334).

The record shows satisfactorily that although the appellant Cristobal owned the lumber concession at Km. 52 where Waoyan and his companions worked, the development thereof had not yet started at the time their services were contracted for. (Testimony of Leonor Licardo trans. p. 240-241). It is also clear beyond question that their services were engaged exclusively for the purpose of cutting timber from appellant Cristobal's concession, which timber they were to saw into finished lumber of the quantity and size ordered by her because the same was to be used in the construction of her own building in the City of Baguio. Waoyan and his companions, therefore, were not employed to develop or exploit the lumber concession aforesaid for commercial purposes, that is, to cut timber therefrom for the purpose of selling it in that form or as finished lumber, for profit. They were employed exclusively to cut a def-

inite and known number of trees and to saw them into finished lumber of a size previously determined, the lumber thus produced to be used in constructing appellant Cristobal's building in Baguio. This is not the "industrial employment" of which the Workmen's Compensation Act speaks.

Even assuming that the building for which the lumber was intended was to be a commercial building, that alone would not elevate appellant Cristobal to the category of an *industrial employer*, as that term is used in the Workmen's Compensation Act (71 C. J. p. 372).

We believe, however, that the present case falls within the purview of the Employers' Liability Act. The latter—it will be observed—applies to any employee, except domestic servants or agricultural laborers (Act 1874, sections 1 and 9). It applies likewise to cases that do not fall under the Workmen's Compensation Act because the gross income of the employer in the year immediately preceding that when the accident took place was less than ₱20,000 (Act 3428, as amended by section 14, Act No. 3812).

Inasmuch as under the Employers' Liability Act it must be shown that the employee suffered personal injury without negligence on his part, it becomes necessary to determine whether or not in the case before us Waoyan and his companions were guilty of negligence. Upon this point, we can not accept, as stated heretofore, appellants' theory that on the date of the accident the employees boarded the truck of appellant Cristobal and by means of threats and intimidation forced the driver to take them along to Baguio, the evidence upon this point not being sufficient to justify such finding. Neither do we accept in its entirety the claim of the appellees that on that day Mamac as well as the manager and checker of the appellants ordered the employees to proceed to Baguio on board the truck already mentioned for the purpose of sawing the four "trocillos" that had been taken to said city. As stated heretofore, we are more inclined to believe that the employees had decided to go to Baguio in connection with their unpaid wages and that they employed no unlawful means to secure place on board the truck referred to. Their action was, therefore, provoked and, to a great extent, caused by their employer's failure to pay a part of their wages. Upon the other hand, the negligence of the driver of the truck has been established beyond question in Criminal Case No. 34 of the lower court in which he was charged with, and subsequently found guilty of a violation of the provisions of paragraph 2, section 67 of Act No. 3992. The driver's negligence, in the absence of any circumstance exempting his employer from liability therefor must be the latter's negligence also in the eyes of the law. Consequently, under the provisions of section 1, first paragraph, in relation to those of section 3 of the Employers' Liability Act, the employees who suffered

physical injuries and the heirs of the deceased Waoyan and Dingayan are entitled to recover damages from their employer.

Now, who was truly the employer of Waoyan and his companions?

The appellees contend that the appellants Abellera and Cristobal were partners in the development and exploitation of the lumber concession located at Km. 52 and in relation with the building under construction for which the timber cut and sawed by Waoyan and his companions was needed. The appellants, on the other hand, contend that appellant Cristobal was the exclusive owner of the aforesaid lumber concession and building under construction and that whatever appellant Abellera had done in the premises was done in his capacity as her friend or agent. Upon this point the trial court found for the appellees and held as follows:

"Defendant Ernesto Abellera also tried to establish that he had no connection and intervention in the lumber business of Dativa Cristobal. But the evidence is very strong that his connection and intervention in the employment of the plaintiffs in this work was not merely that of a friend of Dativa Cristobal. It is quite clear that his interest is that of a business partner of defendant Dativa Cristobal. According to the evidence, in spite of his singular denial, he himself contracted these laborers, he made partial payments to them, he received the lumber, he indicated where to put the timber, he liquidated with the representative of the workers the amount to be paid, he even made two of them watchers to guard the materials of their house under construction. He talked with the plaintiffs and the Public Defender about the proposed settlement. He offered to settle their claim for ₱1,000. All these facts show an interest as partner and owner in the business with Miss Cristobal. And the strong corroboration of his business participation is the fact that the driver Nicolas Costales and the checker and conductor Alagar stated, as defense witnesses, in their testimonies in criminal case against the former that these sawyers were workers of the defendants Dr. Ernesto Abellera and Miss Dativa Cristobal."

We are unable to accept appellees' theory upon this question and to agree with the findings of the trial court. The record shows conclusively that the lumber concession at Km. 52 and the building under construction mentioned heretofore belonged exclusively to appellant Cristobal. The truck involved in the accident that caused the death of Waoyan and Dingayan and the physical injuries suffered by their companions also belonged exclusively to her. It is not true that Abellera was the one who contracted Waoyan and his companions. The great preponderance of the evidence shows that it was with the appellant Cristobal with whom Mamac reached an agreement with reference to the cutting of timber from her concession and that it was Mamac who actually and directly contracted the services of Waoyan and his companions. That appellant Abellera received the lumber brought to Baguio from the lumber concession at Km. 52, and indicated the place where the same should be stored, that he liquidated with the representative of the laborers the amount to be paid, made

payments in accordance with the contract and designated two watchers to guard the materials brought to Baguio may all be true, but these circumstances do not constitute sufficient evidence to show that, actually, he was a partner of his co-appellant and not a mere "gestor" or agent. As a matter of fact all these circumstances have been satisfactorily explained by uncontradicted evidence to the effect that before appellant Cristobal left for Manila (before the first load of sawed lumber was brought to Baguio) she had requested appellant Abellera to look after her interests and actually left with him the sum of ₱500 to take care of her obligations to Mamac and his men. That she should do so was not extraordinary or amazing at all. They were housemates and partners in a drugstore business.

It is true that Nicolas Costales and Hermenegildo Alagar testified in Criminal Case No. 34 that Waoyan and his companions were employed by the appellants Abellera and Cristobal, but aside from the doubtful admissibility of such evidence against the herein appellants who were not parties in said criminal case and who could not have possibly intervened in said proceedings to protect their interest for the reason that the offended parties therein had expressly reserved their right to file a separate civil action for damages, such testimony is too inherently weak to overthrow the positive evidence showing that appellant Cristobal was the exclusive owner of the lumber concession and building under construction mentioned heretofore and that it was she alone who had an agreement with Mamac in connection with the cutting of timber in her concession. As a matter of fact, Alagar merely *presumed* that the appellants were partners (transcript p. 53, Exhibit T), and Costales, after stating that Waoyan and his companions were "Sawyers of Miss Dativa Cristobal and Dr. Abellera" (Id., p. 58), referred to them as "laborers of Miss Dativa Cristobal as ourselves" (Id., p. 65).

Pursuant to the provisions of section 2 in relation to those of section 3, paragraph 3 of Act No. 1874, the amount of damages that may be awarded for the death of an employee shall not be less than ₱500 nor more than ₱2,500, the assessment or determination thereof to be made, according to the first paragraph of the section last mentioned, with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable. Upon the evidence of record we can not say that appellant Cristobal was negligent in employing her driver Costales who was a qualified driver at the time of the accident of which Waoyan and his companions were the victims. On the other hand, although we must accept the fact that Costales was negligent in driving his truck, the evidence of record does not clearly show the degree of his negligence. In view of all these circumstances the fair thing to do, in our opinion, is to fix the damages to which the heirs of the deceased Waoyan and Dingayan

are entitled in an amount between the minimum and the maximum fixed by law. To the heirs of each of said deceased, therefore, the Court allows the sum of ₱1,250, in full settlement of their claim. With reference to the damages due for the physical injuries suffered by the other plaintiffs, we find that the amounts adjudged by the trial court are reasonable, although they were based on the provisions of the Workmen's Compensation Act. Furthermore, the interested parties not having appealed, we can not now increase the amounts awarded by the trial court.

In view of the conclusions we have arrived at, as set forth in the joint consideration of the assignments of error made in appellants' brief, except the fifth, we find it unnecessary to consider the question of evidence raised in the latter.

In view of all the foregoing, the judgment appealed from is hereby amended as follows:

(a) The appellant Dativa Cristobal shall pay to the heirs of Pedro Waoyan the sum of ₱1,250, and to the heirs of Baltazar Dingayan an equal amount;

(b) The case is dismissed and the judgment appealed from, therefore, is consequently reversed, as to the appellant Ernesto Abellera. In all other respects not inconsistent herewith the judgment appealed from is affirmed.

Montemayor, Pres. J., and Concepción concur.

Judgment modified.

September 3, 1948

ORDER

On August 11, 1948 the appellant Dativa Cristobal filed a motion ex-parte for the reconsideration of the decision rendered herein on July 6 of the same year. It appears, however, that on the same date said appellant had served a copy of the motion aforesaid upon the attorneys for the appellees.

Upon consideration of said motion we find merits in the contention that the damages awarded to some of the appellees should be reduced to make them conform to the result of the evidence.

According to the evidence Poncio Eli, Mariano Palpal, Patricio Gumawi, Luis Pimoong, Rafael Lakguing and Paulino Pitong suffered personal injuries which incapacitated them for a period of from 7 to 14 days, from 7 to 14 days, 7 to 10 days, from 7 to 10 days, for 7 days and for 17 days, respectively. Each one of them is entitled to damages equivalent to their total earnings for the number of days they were respectively incapacitated to do their usual work. Consequently, on the basis of an earning capacity of ₱4 per day, which is fully justified by the evidence, Poncio Eli is entitled to recover from the appellant Dativa Cristobal the total sum of ₱56, Mariano Palpal the sum of ₱56, Patricio Gumawi the total sum

of ₱40, Luis Pimoon the total sum of ₱40, Rafael Lakguing the total sum of ₱28 and Paulino Pitong the total sum of ₱68.

In the case of Benito Gatiluan the evidence shows that the personal injuries suffered by him would require from three to six months to heal completely and that it is only after that period of time that he would be in a position to dedicate himself to his usual endeavors. In his case, therefore, we find the sum of ₱500 awarded in the original decision of this Court to be in accordance with the evidence and the law.

In all other respects we find the aforesaid motion for reconsideration without merits.

Wherefore, the original decision of this Court promulgated on July 6, 1948 is hereby amended as above stated. So ordered.

Concepción, J., concur.

Original decision of July 6, 1948 is amended.

CONCEPCION, J.:
I hereby certify that Presiding Justice Marceliano R. Montemayor took part in deciding the motion for reconsideration of appellant Dativa Cristobal and voted in favor of the foregoing resolution.

[No. 1232-R. July 12, 1948]

C. N. HODGES, plaintiff and appellee, *vs.* MARIANO R. LACSON, defendant and appellant

1. PUBLIC INTERNATIONAL LAW, EVOLUTION OF; PRE-WAR OBLIGATIONS, PAYMENT THEREOF DURING JAPANESE OCCUPATION; CASE OF HAW PIA *vs.* CHINA BANKING CORPORATION, CONTROLLING.—Since April 28, 1873, or about thirty years before the First Hague conference, the evolution and progressive development of Public International Law has brought to light its more modern tendencies which are indicative of the desire of the nations to shape the rules and principles which govern their acts, whether in peace or in war, on a more up-to-date basis. The question raised in the first assignment of error of appellant has been recently exhaustively discussed and disposed of in a decision rendered by our Supreme Court in the case of Haw Pia *vs.* China Banking Corporation (G. R. No. L-554) promulgated on April 9, 1948. Said decision is now the leading case in the matter in this jurisdiction, for it has settled once and for all the controversial question of the validity or nullity of payments of pre-war debts or obligations made during the period of Japanese occupation of these Islands.
2. ID.; ENEMY PROPERTY, CONTROL OF; "INTANGIBLE PROPERTY" SUCH AS INDEBTEDNESS, ITS CONTROL DOES NOT INVOLVE CONFISCATION OF PROPERTY.—Hyde in its well-known treatise of International Law, in dealing with the matter of control of enemy property within the national domain, and referring particularly to the subject "intangible property, such as indebtedness" says: "*where the debtor is a private individual, there appears to be no reason why the belligerent within whose territory he resides and belongs should not endeavor to control the debt as though*

it were tangible property despite the absence of the alien enemy creditor. The general privilege of control does not, however, imply the existence also of one of confiscation. The duty to abstain therefrom is seemingly recognized in the United States. * * *. The withholding by a belligerent State of interest on its own indebtedness, or the acquisition of any interest due by the inhabitants of its territory to alien enemies, during the course of war, does not involve the confiscation of property, unless upon the termination thereof the State fails to pay the creditor what it has withheld from him or received in his behalf." (Vol. 3, pp. 1738-41.)

3. ID.; ARTICLE 46, SECTION II, HAGUE REGULATIONS; CONFISCATION OF ENEMY PRIVATE PROPERTY BY A BELLIGERENT, RIGHT NOT SUBJECT TO RESTRICTIONS IMPOSED BY HAGUE REGULATIONS.—Altho pursuant to article 46 of section II, of the Hague Regulations private property cannot be confiscated, Japan was not, however, bound thereby for the reason that she was not one of the contracting parties. She was, therefore, free to act as she thought best to protect her interests during the last war. In *Ware vs. Hylton*, 1 L. ed., pp. 580-581, it has been ruled that in time of war, when the right of confiscation is exercised against enemy property as one nation, such right becomes a belligerent right, and as such is not subject to the restriction imposed by the Hague Regulations and controlled by the laws and measures of war. (See *Young vs. United States*, 97 U. S., 39; *Littlejohn vs. United States*, 270 U. S. 215; *Hyde*, Int. Law, Vol. 3, p. 1728; *Evans*, Cases on International Law, pp. 532-533; *Magoon* "Law of Civil Government under Military Occupation", pp. 265-266. It is thus seen, therefore, that the principle which prohibits confiscation of private property has been modified, and in case of war the army of occupation of a belligerent nation has the right and authority to seize and administer enemy property. Thus, Japan under its military administration established in the Philippines an office of "Enemy Property Custody" in the same manner that the United States likewise under the provisions of its "Trading with the Enemy Act" established an office known as "Alien Property Custodian"; and this procedure has been adopted by Great Britain, Argentina, Chile, Mexico, Cuba, Brazil, Paraguay, France, Guatemala, and other members of the United Nations, which shows that during the last war, "the doctrine of confiscation of private property has been put into practice by those and other nations; consequently, if the exercise of the right of confiscation and seizure of private property on the part of the United States and other members of the United Nations is recognized, there would be no reason to deny it to Japan. "Whatever is lawful for one nation to do in times of war, is lawful for the other" (*Ware vs. Hylton*, 1 L. ed., pp. 580-581; *Williams vs. Bruffy*, 96 U. S. 176; *Halleck*, International Law, Ch. 14, sec. 9). (See also: *Peralta vs. Director of Prisons*, 42 Off. Gaz., 198).

4. ID.; "DE FACTO" GOVERNMENT; GOVERNMENT ESTABLISHED BY JAPAN DURING HER OCCUPATION OF THE PHILIPPINES WAS A "DE FACTO" GOVERNMENT; ACTS OF "DE FACTO" GOVERNMENT; THEIR VALIDITY CANNOT NOW BE QUESTIONED.—The civil government established by Japan during her three years of occupation of these Islands was a *de facto* government. (*Co Kim Chan vs. Tan Keh*, 41 Off. Gaz., 779 (X L. J., 87). In the case at bar, the *de facto* government established by Japan in the Philippines was the government that compelled the defendant, M. R. Lacson, to satisfy his debts to plaintiff C. N. Hodges, by paying them to the office of the "Enemy Property Custody" of the Japanese invaders. Lacson foresaw the consequences of his

refusal to comply with the demand made on him by the Japanese Military Administration, and did his best to redeem the mortgage, wherefore the office of the "Enemy Property Custody" of the Imperial Japanese Army in the Philippines discharged his obligation and ordered the cancellation of the mortgage. The validity of those acts, might have been contrary to the letter and spirit of Article 46 of the Hague Regulations, but it cannot now be questioned in our country. (Evans, Cases on International Law, page 532, citing *Elphinstone vs. Bedrechchunched, Knapp*, P. C. 316; *Dow vs. Johnson*, 100 U. S. 158.)

5. ID.; RIGHT TO ISSUE CURRENCY BY BELLIGERENT OCCUPANT.—The belligerent occupant has the right to issue currency and make it legal tender under its general power to maintain peace and order, and that its intrinsic value is immaterial because the legal value thereof as proclaimed by the invader is what prevails.
6. ID.; PAYMENT; GENERAL RULE; EXCEPTION; ARTICLE 1164, CIVIL CODE.—The contention that the payment made by the defendant Lacson to the office of the "Enemy Property Custody" of the Japanese Military Administration was null and void, because it was not made to the creditor Hodges or to a person duly authorized by him to accept such payment is untenable. It is undeniable that this is the general rule, which, however, has its exception. Article 1164 of said Code says that "a payment in good faith to the person who is in possession of the credit shall release the debtor." And this is what exactly happened in the premises. The Japanese Military Administration seized the credit of Hodges and ordered the debtor Lacson to pay the amount of such credit and the corresponding interest. The office of "Enemy Property Custody" of the Japanese Military Administration having substituted the creditor Hodges in the possession of the credit, the case became one that falls within the provision of article 1164 of the Civil Code. (Commentaries of Manresa on Articles 1162 and 1164, Civil Code, pp. 252, *et seq.*).

APPEAL from a judgment of the Court of First Instance of Iloilo. Blanco, J.

The facts are stated in the opinion of the court.

Vicente J. Francisco for appellant.

Leon P. Gellada for appellee.

TORRES, J.:

In his amended complaint of November 21, 1935, as his first cause of action, C. N. Hodges alleged that on May 31, 1935, to guarantee a loan of ₱50,000, defendant Mariano R. Lacson executed in his favor a first mortgage on his lots Nos. 920 and 569 of the cadastre of the municipality of Iloilo, located in the City of Iloilo, which was duly recorded in the Office of the Register of Deeds for the province of Iloilo on June 1, 1935; that said mortgage has never become cancelled nor discharged; that plaintiff C. N. Hodges has never received any payment of the principal sum of ₱50,000 of the aforesaid mortgage, nor executed any document cancelling or releasing the same in favor of defendant Mariano R. Lacson; that the Office of the "Enemy Property Custody" of the Imperial Japanese Army in the Philippines,

without any right whatsoever and without the knowledge, consent and authority of plaintiff Hodges, executed a certificate of cancellation dated July 19, 1944, in favor of defendant Lacson, cancelling the mortgage in favor of plaintiff Hodges, which certificate of cancellation was inscribed on August 18, 1944, at the back of transfer certificate of title No. 1588 of the Office of the Register of Deeds of Iloilo; that the Register of Deeds of Iloilo, without any right whatsoever and without requiring the presentation and surrender of the owner's duplicate of transfer certificate of title No. 1588, as required by law, did annotate at the back of said transfer certificate of title No. 1588 in the Office of the Register of Deeds of Iloilo, the aforementioned certificate of cancellation executed by the Office of the Enemy Property Custody of the Imperial Japanese Army in the Philippines.

As second cause of action, plaintiff Hodges averred that said mortgage was executed to guarantee the payment of a loan of ₱50,000 within five years from May 31, 1935, with interest thereon at the rate of 12 per cent per annum, and with additional 10 per cent on the total indebtedness as attorney's fees, apart from all court costs and fees, and that among the several conditions provided in said mortgage, it was stipulated that at the time the said mortgagor would fail and refuse to pay the amount secured by said mortgage when due, or to comply with any of the terms and conditions of the mortgage, plaintiff would have the right to foreclose the mortgage pursuant to law, and the mortgagee entitled to take immediate possession of the properties described in the deed of mortgage and to collect the rents from the same until complete liquidation of the mortgage has been made.

It was further alleged that defendant Mariano R. Lacson has violated the conditions of the mortgage in that he has neglected and failed, and still fails and refuses, to pay the plaintiff the amount of ₱50,000, plus interest, and has likewise failed and neglected to pay the premiums of the insurance as required by the mortgage, and has further failed and neglected, and still fails and neglects, to pay the taxes corresponding to the mortgaged properties, and the plaintiff was obliged to pay said premium on insurance and taxes, and, further, the defendant has refused and still refuses to deliver the possession of all the properties described in the deed of mortgage, so that the plaintiff may collect the rents from the same until complete liquidation of the mortgage has been made. Wherefore, he prayed, for the first cause of action, that judgment be rendered declaring the acts of the Register of Deeds in cancelling the annotation of the mortgage-debt of defendant Mariano R. Lacson to plaintiff C. N. Hodges, null and void, and that defendant Sofronio Flores, as Register of Deeds of Iloilo, be ordered to cancel every annotation made on the transfer certificate of title No. 1588 in the possession

of said Register of Deeds, to the effect that the mortgage debt of defendant Mariano R. Lacson to plaintiff C. N. Hodges has already been paid.

As for the second cause of action, plaintiff prays that judgment be rendered ordering Mariano R. Lacson to pay the principal sum of ₱50,000, with interest at the rate of 12 per cent per annum from May 31, 1935, compounded yearly, until paid; to pay the sum of ₱10,782 as attorney's fees, exclusive of court costs and charges; that a judgment and decree of foreclosure be entered in this case requiring defendant Mariano R. Lacson to pay the said plaintiff mortgagee the above-mentioned sums due him and that, in default of such payment, the properties described in the deed of mortgage with all the buildings and improvements thereon, be sold and the proceeds of the sale applied to the payment of all the amounts due the plaintiff, and that said defendant and all persons claiming under him subsequent to the execution of the said mortgage upon those premises, either as purchasers, encumbrancers, or otherwise, be barred and foreclosed of all rights claimed or equity of redemption in said premises and every part thereof and that said plaintiff may likewise have judgment and execution against the property of Mariano R. Lacson for the deficiency which may remain after applying the proceeds of the sale of the parcels of land and premises properly applicable to the satisfaction of said judgment; that defendant Mariano R. Lacson be ordered to deliver to plaintiff the immediate possession of all the properties described in the deed of mortgage, and that Linnie Hodges or any person suitable to the Court be appointed as receiver of the mortgaged properties to take possession of the same and to collect the rents therefrom during the pendency of this action for the foreclosure of mortgage with such bond as the Court may deem fit and proper.

C. N. Hodges presented a motion to dismiss the counter-claim and cross-complaint of defendant Mariano R. Lacson, which was overruled by the Court. On December 17, 1945, Plaintiff C. N. Hodges, answering the counter-claim and cross-complaint of defendant Mariano R. Lacson, alleged that said defendant expressly gave authority to plaintiff C. N. Hodges to collect the rents of the properties mortgaged, so that whatever rents were collected may be applied to the interest of the principal of the mortgage debt.

On January 17, 1946, defendant Mariano R. Lacson filed his second amended answer wherein, among other things, he admitted that the Office of the Enemy Property Custody of the Japanese Imperial Army in the Philippines, on July 19, 1944, executed in his favor a deed of cancellation of said mortgage, which certificate was registered in the Office of the Register of Deeds of Iloilo and inscribed on the back of transfer certificate of title No. 1588.

In his special defense, Mariano R. Lacson quoted certain provisions of a Proclamation issued on January 3, 1942,

by the Commander in Chief of the Japanese Military Forces, to the effect that as the result of Japanese military operations, the sovereignty of the United States of America over the Philippines had "completely disappeared and the Army hereby proclaims the military administration under the Martial Law over the districts occupied by the Army", and "so far as the military administration permits, all the laws, both executive and judicial, now in force in the Commonwealth shall be effective, for the time being, as in the past."

Defendant also alleged that all the properties of American citizens in these Islands, including credits held by them, were declared "enemy property" by the Japanese Army of the Philippines, and that through the office of the "Enemy Property Custody," the Japanese military administration demanded from defendant that the mortgage credit of plaintiff, who is an American citizen, over the property described in his complaint, be paid by the defendant to the Japanese government; that in view of the fact that the act of disobeying whatever demand made by the Japanese military administration was severely punishable, including with death penalty, the defendant had no other alternative but to obey and comply with said demand by paying the Office of "Enemy Property Custody," on July 19, 1944, the whole amount of the debt, including interests; that on July 19, 1944, by virtue of such payment, the office of "Enemy Property Custody" certified to the fact that the total amount of the loan had been paid, and issued an order to the Register of Deeds of Iloilo to cancel the mortgage, and said official, in pursuance of said order, registered the deed of cancellation of the mortgage and made the corresponding annotation thereon on the back of the transfer certificate of title No. 1588.

It is further alleged by defendant that under the rules of International Law, the payment made by him to the Japanese Military Administration, being valid and legal, resulted in the extinguishment of the obligation contracted by him in favor of the plaintiff; that the registration of the deed of cancellation by the Register of Deeds was likewise valid and legal because, pursuant to a ruling made by the Supreme Court in the case of *Co Kim Cham vs. Eusebio Valdez Tan Keh, et al.*, G. R. No. L-5, September 16, 1945 (X L. J. Oct. 31, 1945), the government then established by the Japanese in the Philippines was a *de facto* government.

In his counter-claim, the defendant alleged that from January, 1937, to December, 1941, the plaintiff, without any legal right or any authority given him by the deed of mortgage, had been collecting the rentals of the property known as Lacson Building, the amount of which is not less than ₱1,000 a month, or a total of ₱60,000 during the years, 1937, 1938, 1939, 1940 and 1941, and that said

plaintiff, notwithstanding the demands made on him, has not delivered to defendant said amount either partially or totally; neither has said plaintiff rendered an annual accounting of the collections made by him, and all these acts of plaintiff have caused the defendant damages in the amount of ₱60,000, with legal interest. Wherefore, the defendant prayed to the Court that judgment be entered in the premises absolving him of the complaint and, by virtue of his counter-claim, that said plaintiff pay the defendant the sum of ₱60,000, or the total amount of the rentals of said building that he had illegally collected corresponding to the months of January, 1937, to December, 1941, inclusive.

Finally, on December 2, 1946, the Court of First Instance of Iloilo, after having heard the evidence in this case, rendered judgment for the plaintiff and against the defendant, the dispositive part of which reads as follows:

"Por las consideraciones expuestas, se dicta sentencia:

"(a) Declarando que el demandado Mariano R. Lacson está en mora y en deber al demandante C. N. Hodges la suma de ₱115,674.59, en moneda filipina, más sus intereses de 12 por ciento al año por ₱50,000 de ella y 6 por ciento al año por el resto (₱65,674.59) de la misma;

"(b) Declarando que el demandado debe pagar al demandante, en concepto de honorarios de abogado, una suma adicional equivalente al 10 por ciento de la cantidad total adeudada;

"(c) Ordenando al demandado que tan pronto como se levante definitivamente la moratoria dispuesta en la Orden Ejecutiva No. 32 del Presidente de Filipinas, serie de 1945, deposito en esta Juzgado, de conformidad con las disposiciones del artículo 2 de la Regla 70 de las Reglas de los Tribunales, la citada suma de ₱115,674.59, más sus intereses de doce por ciento (12%) anual desde el 1º de diciembre de 1946, hasta su completo pago, y los Honorarios de Abogado expresados en el párrafo (b) anterior;

"(d) Declarando nulos y sin ningún valor el certifico y/o recibo de pago (Exhibit 4) firmado por el 'Office of Enemy Property Custodian' japonés, el llamado 'Cancellation of Mortgage' (Exhibit 5) de fecha 13 de julio de 1944 y la anotación de dicha cancelación en el certificado de transferencia de título No. 1588 hecha por el registrador de Iloilo, ordenándose a dicho registrador, aquí también demandado, que anote en el citado certificado de transferencia de título la aquí ordenada cancelación y anulación de la referida cancelación de hipoteca y su anotación; quedando, por tanto, subsistente y en vigor la hipoteca (Exhibit A) otorgada en Iloilo el 31 de mayo de 1935 por el demandado a favor del demandante y anotada el dorso del repetido certificado de transferencia de título No. 1588, expedido por el registrador de títulos de Iloilo.

"El demandado pagará las costas de este juicio."

Defendant appealed from said judgment, and in the brief filed in his behalf, counsel makes the following assignment of errors:

"I.

"The trial court erred in holding that the payment made by Mariano R. Laeson to the Office of Enemy Property Custody, Imperial Japanese Army, was null and void and did not discharge appellant's debt to C. N. Hodges.

"II.

"The trial Court erred in holding that Mariano R. Lacson is indebted to C. N. Hodges as of November 30, 1946, in the amount of ₱115,674.59.

"III.

"The trial Court erred in not sustaining the counterclaim of Mariano R. Lacson against C. N. Hodges in the amount of not less than ₱60,000."

From our perusal of the record of this case, it may be stated that the outstanding facts which gave rise to this litigation consists of the following:

On May 31, 1935, Mariano R. Lacson secured from C. N. Hodges a loan of ₱50,000, payable within five years, with interest at the rate of 12 per cent per annum. To guarantee said loan, he executed in favor of the creditor a mortgage on his properties consisting of lots Nos. 920 and 565 of the cadastral survey of Iloilo, with all the improvements thereon, including a two-story building of strong materials, known as Lacson Building, located on J. M. Basa street, City of Iloilo. It has been stipulated in the deed of mortgage that the mortgagor, Mariano R. Lacson, agreed to pay the mortgagee interest at the rate of 12 per cent per annum on the amount of the loan of ₱50,000, said interest to be paid yearly during the life of the contract; that in the event of foreclosure, the mortgagee shall be entitled to compensation for attorney's fees equivalent to 10 per cent on the total indebtedness; that the mortgagor shall keep all the improvements in good repair and shall insure the property for not less than ₱50,000 which insurance shall be kept in full force during the five years life of the mortgage; that in the event that the mortgagor would default in the payment of interest or taxes or insurance premiums, for any year, the principal amount of the loan would mature, the mortgagee being authorized by the mortgagor to take possession of all the properties described in the mortgage deed and collect the rents from the same until complete liquidation of the mortgage would have been made (Exhibit A).

By the first assignment of error, counsel contends that the lower Court should have upheld the validity of the payment made by Mariano R. Lacson to the "Office of Enemy Property Custody" of the Imperial Japanese Army, instead of declaring it null and void and that it did not discharge appellant's debt to C. N. Hodges.

In deciding this point against appellant, the lower Court, relying on the provision of article 1162 of the Civil Code, found that in this case the payment was not made to the creditor or person duly authorized by him to receive such payment, and that plaintiff did not receive the same. In regard to the question of whether the office of "Enemy Property Custody" of the Japanese Army was authorized to accept such payment, or, was in possession of the mortgage credit, the lower Court ruled that under our laws and the

principles of public international law, the answer should be in the negative. The Court *a quo* said that, inasmuch as there is nothing in our laws that empowered the "Office of Enemy Property Custody" of the Japanese Army to seize and dispose of the mortgage credit in question, and since the defendant debtor was cognizant of the circumstances under which he made the payment, by making such payment his obligation was not discharged. Moreover, from the point of view of Public International Law, the Court *a quo*, relying on the ruling laid down by the United States Supreme Court in *Williams vs. Bruffy* (96 U. S. 176; 24 L. ed. 716), and *Planter's Bank vs. Union Bank* (16 Wall. 483, 21 L. ed. 475), likewise maintained that the alleged payment made by defendant to the Office of "Enemy Property Custody" is not valid.

Our perusal of the above-mentioned U. S. Supreme Court decisions shows that they were handed down a long time before the first World War, that is, in March 25, 1878 and April 28, 1873, respectively, or about thirty years before the First Hague Conference. Since then, the evolution and progressive development of public international law has brought to light its more modern tendencies which are indicative of the desire of the nations to shape the rules and principles which govern their acts, whether in peace or in war, on a more up-to-date basis. The question raised by counsel in the first assignment of error has been recently exhaustively discussed and disposed of in a decision rendered by Our Supreme Court in the case of *Haw Pia vs. China Banking Corporation*, which was promulgated on April 9, 1948, several months after the respective briefs in the instant case have been filed in this Court by the parties. Said decision—notwithstanding the objection of counsel for appellee to the petition of counsel for appellant that it be considered by us in the determination of the main issue in this case—is now the leading case in the matter in this jurisdiction, for it has settled once and for all the controversial question of the validity or nullity of payments of prewar debts or obligations made during the period of Japanese occupation of these Islands.

Mutatis mutandis, that Philippine decision is perfectly applicable for the solution of the question brought by appellant for our determination. In that case, Haw Pia sued the China Banking Corporation in the Court of First Instance of Manila to compel the latter to execute a deed of cancellation of the mortgage on the property described in the complaint, and to deliver to said plaintiff the transfer Certificate of Title to said property with the mortgage annotated therein already cancelled, and to pay the plaintiff the sum of ₱1,000 for damages as attorney's fees. Haw Pia alleged that his indebtedness to the China Banking Corporation in the sum of ₱5,103.35 by way of overdraft in current account payable on demand with its interests, has been completely paid to the China Banking Corporation

through the Bank of Taiwan Ltd., that was appointed by the Japanese Military authorities as liquidator of the China Banking Corporation. The latter made a demand upon Haw Pia for the payment of ₱5,103.35 with interests representing the debt of plaintiff, and in the answer it set up a counterclaim demanding payment by plaintiff, within 90 days from and after the date Executive Order No. 32, series of 1945, on Moratorium, would have been repealed, of the amount due by the plaintiff to the Bank by way of overdraft with its interest at 9 per cent per annum, to be compounded monthly, and the additional sum of ₱1,500 as attorney's fees.

After hearing, the lower Court, holding that, as there was no evidence to show that the defendant China Banking Corporation had authorized the Bank of Taiwan, Ltd., to accept payment of plaintiff's debt to said defendant, and said Bank of Taiwan as an agency of the Japanese Invading Army, was not authorized under the international law to liquidate the business of the China Banking Corporation, the payment made by plaintiff has not extinguished her indebtedness to the China Banking Corporation under article 1162 of the Civil Code. The Court of First Instance of Manila, therefore, absolved the defendant China Banking Corporation from the complaint of the plaintiff, and sentenced the latter to pay the former the sum of ₱5,103.35 with interest, within the period of ninety days from and after the above-mentioned Executive Order No. 32 would have been repealed and set aside, and ordered that, if the plaintiff failed to pay within the said period, the property mortgaged shall be sold at public auction and the proceeds of the sale applied to the payment of said obligation. The plaintiff appealed, and the Supreme Court which then had jurisdiction over that case in considering the various assignment of errors made by plaintiff-appellant, reduced the issues raised therein to the following:

First, "whether or not the Japanese Military Administration had authority to order the liquidation or winding up of the business of the defendant-appellee China Banking Corporation, and to appoint the Bank of Taiwan liquidator authorized as such to accept the payment by the plaintiff-appellant to said defendant-appellee"; and

Second, "whether or not such payment by the plaintiff-appellant has extinguished her obligation from said defendant-appellee."

The two-above-quoted points which the Supreme Court discussed and decided in the Haw Pia vs. China Banking Corporation case, are the same questions involved in the case before us, because except for the fact that in the present case the plaintiff was the mortgage creditor of defendant, an American citizen whose credits and assets were seized and liquidated by the Japanese "Enemy Property Custody", representing the Japanese Military Ad-

ministration, and in the Haw Pia *vs.* China Banking Corporation case, the plaintiff sued the China Banking Corporation whose assets had been liquidated by the Bank of Taiwan, Ltd., representing the Japanese Military Administration, the points involved are otherwise exactly the same.

In regard to the first point, Mr. Justice Feria speaking for the Supreme Court, in a seven to three decision, is of the opinion and held that "the Japanese Military authorities had power, under the international law, to order the liquidation of the China Banking Corporation and to appoint and authorize the Bank of Taiwan as liquidator to accept the payment in question, because such liquidation is not a confiscation of the properties of the bank appellee; but a mere sequestration of its assets which required the liquidation or winding up of the business of said bank." It further held that "the belligerents in their effort to control enemy property within their jurisdiction or in territories occupied by their armed forces in order to avoid their use in aid of the enemy and to increase their own resources, after the Hague Convention and especially during the first World War, had to resort to such measures of prevention which do not amount to a straight confiscation, as freezing, blocking, placing under custody and sequestering the enemy private property. Such acts are recognized as not repugnant to the provisions of Article 46 or any other article of the Hague Regulations by well-known writers of International Law, and are authorized in the Army and Navy Manual of Military Government and Civil Affairs not only of the United States, but also in similar manuals of Army and Navy of other civilized countries, as well as in the Trading with the Enemy Acts of said countries."

In the light of the above-quoted rulings and other doctrines, our Supreme Court after a thorough discussion of numerous precedents found in decisions rendered by Courts of last resort and in books on International Law written by eminent writers, came to the conclusion that, it being presumed that Japan, in sequestering and liquidating the China Banking Corporation must have acted in accordance, "either with her own Manual of the Army and Navy and Civil Affairs, or with her Trading with the Enemy Act, and even if not, it being permitted to the Allied Nations, specially the United States and England, to sequester, impound, and block enemy properties found within their own domain or in enemy territories occupied during the war by their armed forces, and it being not contrary to the Hague Regulations or international law, Japan had also the right to do the same in the Philippines by virtue of the international law principle that 'what is permitted to one belligerent is also allowed to the other'".

It might be argued that in view of the fact that the party adversely affected by the seizure in the case before

us is a private individual, while in the Haw Pia vs. China Banking Corporation is a banking concern, there is no parity between the two cases. We must not lose sight of the fact that in both cases what the Japanese Military Administration seized in the one case is the credit of the China Banking Corporation against Haw Pia, and in the case before us is the mortgage credit of C. N. Hodges against Mariano Lacson, the plaintiff herein. Hyde in its well-known treatise on International Law, in dealing with the matter of control of enemy property within the national domain, and referring particularly to the subject "intangible property, such as indebtedness" has the following to say:

"Debts. In the case of intangible property, such as the indebtedness of a State as well as of the inhabitants of its territory to enemy persons outside of the national domain, practice seems clearer. The indebtedness of a State possesses a special quality of indestructibility due to the circumstance that cancellation by the debtor would amount to a breach of good faith, and hence a stain upon its own national honor. In loaning his money to such a public debtor, the creditor may be said to rely upon the assumption that the State is incapable of bad faith, and upon the implied understanding that cancellation of the debt would constitute such conduct. It is highly improbable that the United States would resort to confiscation.

"Where the debtor is a private individual, there appears to be no reason why the belligerent within whose territory he resides and belongs should not endeavor to control the debt as though it were tangible property despite the absence of the alien enemy creditor. The general privilege of control does not, however, imply the existence also of one of confiscation. The duty to abstain therefrom is seemingly recognized in the United States. Declared a careful observer of American practice, in 1928:

'The policy of the United States, as reflected chiefly in legislation and in treaties, has been very consistent in regard to debts and shares of moneys in the public funds or in banks, irrespective of the residence of the owner. Although debts were generally sequestered during the Revolutionary War and actually confiscated in one of the States, the practice of confiscation was declared in a permanent treaty between the United States and Great Britain in 1794 to be unjust and impolitic, and although this declaration was not repeated in subsequent treaties, the provision against confiscation of debts has been embodied in the treaties of the United States with such regularity that, with due reservation in regard to the possibility that the usage may not have fully developed into a rule of customary international law binding upon all nations, it may safely be said that it has been the consistent policy as well as practice of the United States to refrain from the confiscation of debts and shares or moneys in the public funds or debts.'

"The withholding by a belligerent State of interest on its own indebtedness, or the acquisition of any interest due by the inhabitants of its territory to alien enemies, during the course of war, does not involve the confiscation of property, unless upon the termination thereof the State fails to pay the creditor what it has withheld from him or received in his behalf." (Vol. 3, pp. 1738-41.)

It appears that although pursuant to article 46 of section II, of the Hague Regulations "private property can not be confiscated, Japan was not, however, bound thereby for the reason that she was not one of the contracting

parties. She was, therefore, free to act as she thought best to protect her interests during the last war. In *Ware vs. Hylton*, 1 L. ed., pp. 580-581, it has been ruled that in time of war, when the right of confiscation is exercised against enemy property as one nation, such right becomes a belligerent right, and as such is not subject to the restriction imposed by the Hague Regulations and controlled by the laws and measures of war. This doctrine has been followed in *Young vs. United States* (97 U. S., 39), where "all property within the enemy territory is enemy property and subject to capture and confiscation".

In the more recent case of *Littlejohn vs. United States* (270 U. S. 215), decided in 1926, the Supreme Court of the United States, in upholding the practice of confiscation and seizure, says that "war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found * * *. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself."

Again, Hyde, elaborating upon this new aspect of the question of confiscation or seizure of property of private ownership, where the owner is an enemy person, makes the following comment:

"* * * Where, however, the owner is the enemy itself, and the property public, or where, in case of private ownership, the owner is an enemy person, outside of the national domain, and a resident of either hostile or neutral territory, the belligerent may reasonably exert direct and exclusive control over the property. *The belligerent may, moreover, proceed to do so, not merely with the design of withholding it from the enemy, but also with that of utilizing an available asset for an economic or military end.*

"To accomplish this twofold purpose, it is reasonable to compel all persons within the national domain having custody of enemy property sought to be controlled, or owing money to an enemy person (of the class whose property the State seeks to control), to disclose the fact and report all particulars. It is not, moreover, an abuse of power so to assert control over a debt due by a local debtor to a nonresident alien enemy creditor as to require payment to the belligerent, as the representative of or trustee for the creditor. The compelling of payment to the belligerent does not imply confiscation of the debt." (Hyde, International Law, Vol. 3, p. 1728.)

Of the same opinion are Evans, in his Cases on International Law (pp. 532-533), and Magoon, in his "Law of Civil Government under Military Occupation", who holds that under the laws and usages of War all property situated in enemy's territory is presumed to be tainted with hostility and liable to confiscation. (Magoon, Law of Civil Government under Military Occupation, pp. 265-266).

It is thus seen, therefore, that the principle which prohibits confiscation of private property has been modified, and in case of war the army of occupation of a belligerent nation has the right and authority to seize and administer

enemy property. Thus, Japan under its military administration established in the Philippines an office of "Enemy Property Custody" in the same manner that the United States likewise under the provisions of its "Trading with the Enemy Act" established an office known as "Alien Property Custodian"; and as aptly expounded by counsel in his brief for appellant, this procedure has been adopted by Great Britain, Argentina, Chile, Mexico, Cuba, Brazil, Paraguay, France, Guatemala, and other members of the United Nations, which shows that during the last war, the doctrine of confiscation of private property has been put into practice by those and other nations; consequently, if the exercise of the right of confiscation and seizure of private property on the part of the United States and other members of the United Nations is recognized, there would be no reason for us to deny it to Japan. "Whatever is lawful for one nation to do in times of war, is lawful for the other" (*Ware vs. Hylton*, 1 L. ed. pp. 580-581); *Williams vs. Bruffy*, 96 U. S. 176; *Halleck, International Law*, Ch. 14, sec. 9). Of similar import is the ruling laid down by our supreme Court in the case of *Peralta vs. Director of Prisons*, 42 Off. Gaz., 198, where the Court said that "the justice of the case between two enemies being under the law of nations reputed to be equal, whatsoever is permitted to the one in virtue of war is also permitted to the other".

In this connection, the question is also raised as to whether or not the government established by Japan during her three years of occupation of these Islands was a *de facto* government. In *Co Kim Chan vs. Ten Keh*, 41 Off. Gaz., 779 (X L. J., 87), the Supreme Court held that the civil government established by the Japanese military forces of occupation in these Islands was a *de facto* government which fully exercised all the powers given by the laws of war with power to confiscate debts due to the enemy; because "it is a legal truism in political and international law that all acts and proceedings of the legislative, executive and judicial departments of a *de facto* government are good and valid * * *. While it exists, it must necessarily be observed in civil matters by private citizens, who by acts of obedience rendered in submission to that force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government."

In the case before us, the *de facto* government established by Japan in the Philippines was the government that compelled the defendant, Mariano R. Lacson, to satisfy his debts to plaintiff C. N. Hodges, by paying them to the office of the "Enemy Property Custody" of the Japanese invaders. Lacson foresaw the consequences of his refusal to comply with the demand made on him by the Japanese Military Administration, and did his best to redeem the mortgage, wherefore the office of the "Enemy

Property Custody" of the Imperial Japanese Army in the Philippines discharged his obligation and ordered the cancellation of the mortgage. The validity of those acts, might have been contrary to the letter and spirit of article 46 of the Hague Regulations, but it cannot now be questioned in our country.

"In general, a military force in occupation of a conquered country may seize for its own use any private property therein which it deems necessary or convenient, and the validity of such seizures cannot be questioned in the municipal tribunal of the districts where they occur." (Evans, Cases on International Law, page 532, citing Elphinstone *vs.* Bedreschchunched, Knapp, P. C. 316; Dow *vs.* Johnson, 100 U. S. 158.)

Another aspect of this matter that has been brought up by appellant is that he made the payment in question under duress, that is, that Mariano R. Lacson was afraid of the consequences should he disobey or at least merely ignore the demand made of him by the Japanese Military Administration to pay within a few days his indebtedness of ₱50,000 with interest to C. N. Hodges, an American citizen, whose assets have been seized by the Japanese authorities, disobedience that could be considered by those Japanese military authorities as a hostile act and could have made him amenable to severe punishment.

The trial Court, touching upon this point lightly, would not give credence to such contention of appellant, on the ground that it was alleged for the first time during the hearing of this case in the Court below, and no mention of it was made either in the original answer or in the amended answers. Upon perusal of the printed record on appeal, it appears that Mariano R. Lacson in his special and affirmative defenses (p. 13, Record on Appeal), alleged that his predicament was such that, if he did not make great efforts in paying the amount demanded of him by the Japanese by disposing of family jewelry and borrowing from friends and relatives, he ran the risk of losing forever his opportunity to recover his mortgaged properties. Said defendant, answering the amended complaint, repeated said allegations in his special and affirmative defenses (p. 41, Record on Appeal), and in paragraph (c) of the special and separate defense of his second amended answer alleged the following:

"(c) Como quiera que la desobediencia a cualquier requerimiento de la administración militar constitúa un acto de hostilidad que es castigaba con penas severas, incluyendo la muerto, el demandado no tuvo otro remedio que obedecer y cumplir con el referido requerimiento pagando al 'Enemy Property Custody' en Julio 19, 1944, toda la deuda hipotecaria, incluyendo los intereses devengados hasta dicha fecha." (Record on Appeal, p. 52.)

Appellant Lacson at the hearing of this case testified that he had several conferences and interviews with an officer of the Japanese Military Administration who, upon

hearing from this defendant about the difficulties which he met in making the payment demanded of him, said:

"* * * 'Mr. Lacson, Sr. Lacson, usted ha venido aqui a reclamar esta propiedad, ahora le estamos dando la oportunidad para que usted pague para que se quede con la propiedad otra vez', dice 'hasta ahora no he pagado usted, le llamamos la atención de usted que esa propiedad ya es una propiedad del gobierno japonés, y como representantes del Imperial Japanese Army, le exigimos que pague usted esta deuda, tenga usted presente que esta deuda no es ya a un americano sino al gobierno japonés', dice, 'y si usted no lo cumple dentro de tantos días', porque me dieron un plazo de una o dos semanas; dice, 'esta oficina le considera a usted como una persona hostil el gobierno japones'." (t. n. s., p. 10)

In this connection, it may not be amiss for us to state that in dealing with members of the Japanese Army or the Japanese Military Administration, an individual, native or foreign, when confronted with the demand made by the representatives of the Japanese invader, had no choice. Either he had to obey or his disobedience or failure to act as he was told meant for him loss of freedom, inhumane tortures and possibly death.

The lower Court criticized appellant for having discharged his obligation by paying his debts with interest in Japanese military notes. It must be remembered that on July 19, 1944, when such payment was made, these Islands were still under Japanese military rule, and that pursuant to a proclamation issued on January 3, 1942, by the Commander-in-Chief of the Imperial Japanese Army, these military notes were put in circulation, and, according to said proclamation, any attempt "to interfere with the circulation of the war notes (such deeds as rejection of payment, forgery, or spreading the untrue nature of news concerning the war notes of any kind) *his act would be considered as hostile and will be punished severely*". Those Japanese military notes became therefore the legal tender in this country during the occupation days and in the meantime the Commonwealth paper currency which was in circulation at the beginning of the occupation gradually disappeared and thus the Japanese war notes became the only legal tender for all purposes, and as counsel for appellant correctly remarked in his brief, there is no denying the fact that the belligerent occupant has the right to issue currency and make it legal tender under its general power to maintain peace and order, and that its intrinsic value is immaterial because the legal value thereof as proclaimed by the invader is what prevails.

As in the Haw Pia vs. China Banking Corporation case, in the one before us the Court of First Instance of Iloilo relies on Article 1162 that the payment made by defendant Lacson to the office of the "Enemy Property Custody" of the Japanese Military Administration was null and void, because it was not made to the creditor Hodges or to a person duly authorized by him to accept such payment.

It is undeniable that this is the general rule, which, however, has its exception. Article 1164 of said Code says that "a payment in good faith to the person who is in possession of the credit shall release the debtor." And this is what exactly happened in the premises. The Japanese Military Administration seized the credit of Hodges and ordered the debtor Lacson to pay the amount of such credit and the corresponding interest. The office of "Enemy Property Custody" of the Japanese military Administration having substituted the creditor Hodges in the possession of the credit, the case became one that falls within the provision of the latter article (Commentaries of Manresa on Articles 1162 and 1164, Civil Code, pp. 252, *et seq.*).

Having thus disposed of the First error assigned by defendant, we shall now take up his second and third assignment of errors simultaneously.

The lower Court found that defendant Mariano R. Lacson was indebted to and must pay plaintiff Hodges the total sum of one hundred fifteen thousand six hundred seventy-four pesos and 59/100 (₱115,674.59), Philippine currency, with annual interest at twelve per centum on ₱50,000 and 6 per cent on the balance of said amount. According to the trial Court, Lacson's indebtedness amounted to ₱129,624.59. This amount represents the principal (₱50,000), interest of 12 per cent from June 1, 1945 to November, 1946 (₱68,500) and advances made by plaintiff (₱11,124.59). By deducting therefrom the sum of ₱13,950, which consists of interest (₱6,000) paid by defendant for the period from June 1, 1945 to May 31, 1946 and ₱7,950 as rentals collected by plaintiff from September 1, 1940, to December 8, 1941, the lower Court found that the net amount due is ₱115,674.59.

Upon careful examination of the record, the same discloses that the lower Court took for granted that the statement of accounts presented by Hodges as Exhibits G and H, which enumerate alleged advances made by him for land taxes and insurance premiums unpaid, were true. It, however, rejected similar statements of accounts covering sums collected by Hodges from March 1, 1938, to December, 1941, amounting only to ₱4,473; it also disregarded an alleged copy of a circular dated February 28, 1938, notifying the Lacson building tenants that from such date all rents due for each and every room of said building should be paid to Hodges; and the admission made by Hodges in his testimony that he started collecting the rents of the Lacson building from March 1, 1938. On the other hand, the trial Court held that defendant Mariano R. Lacson is liable to plaintiff Hodges for interest during the entire period of Japanese occupation.

As to Exhibits G and H, we agree with counsel that inasmuch as they are hearsay, intended to serve his own interest, because they contain items taken from books that were in the possession of Hodges, and which were not

presented during the trial, and the persons who prepared those statements, although available, were not made to testify to identify them, they are inadmissible and worthless as evidence (*Richmond vs. Anchuelo*, 4 Phil., 596; *Limchinco vs. Terariray*, 5 Phil., 120; *People vs. Tolentino*, G. R. No. 47077, June 14, 1940). Even C. N. Hodges in his testimony admitted that he was not sure about the accuracy of those statements and stated that he "will be willing to correct or change if there is any mistake", that "if that account is not correct, *I am willing to have it corrected*," and that "*there must be some discrepancy*, but we are ready to correct."

Thus, as put up by counsel and disclosed by the evidence, Hodges submitted in his statement a list of items that find no support in the evidence. In Exhibit G, Lacson was credited by him for interest and rents collected, but he failed to do so in Exhibit H. He included items entirely foreign to the transaction, such as, expenses incurred in the "*Hodges vs. Koppel case*," which has nothing to do with the present litigation. Contrary to the terms of the mortgage, he *compounded* the interest in Exhibts G and H, and included in the statement taxes and insurance premiums which he allegedly paid, without serving notice on Lacson two months after this action was began and while this defendant was already in possession of the building, and as if he were very sure of the success of his action, Hodges even charged in advance the costs of this suit.

As regards the amount of ₱115,722.60 which Hodges claims in Exhibit G, we find that in three (3) days said amount had increased to ₱116,336.14 in Exhibit H, and while the trial of this case was in progress his credit shows another increase which reached the sum of ₱119,720.24. Even the lower Court discovered that Exhibits N and O contained items which were repetitions items regarding payment of insurance premiums which had been entered in Exhibits G and H. Since those Exhibits are inadmissible and inasmuch as the items contained therein cannot be verified, it is obvious that the finding of the Court that Hodges advanced ₱11,124.59 for land taxes and insurance premiums is untenable.

Turning now our attention to the collection of rents of the Lacson Building, while the lower court found that Hodges started such collection of the rents on September 1, 1940, the testimony of plaintiff and his Exhibit K are to the effect that under the authority given him in said Exhibit K, he, the plaintiff, started the collection of rents from tenants of the Lacson building from March 1, 1938 up to October, 1941. Evidently, the above-mentioned finding of the Court in this respect is not only erroneous but is also contrary to the evidence presented by the plaintiff Hodges. Such evidence discloses that even prior to February 28, 1938, the date of Exhibit K, the plaintiff had been already authorized by Lacson to collect the rents

from tenants of said building. Lacson paid ₱6,000 to Hodges as interest for the period from June 1, 1935 to May 1, 1936, and, according to him, from the middle of 1936 he authorized Hodges to collect those rents and apply the amount thus collected to the amortization of his debt. In this regard, defendant Lacson has been corroborated by his witnesses Eriberto Gonzales, Irineo Galas and Attorney Jesus Guanzon; and even defendant Hodges, on cross-examination, admitted that Lacson, in a letter given him authorized him to collect the rents from tenants of the Lacson building and said letter was received by him after the payment made by Lacson of interest covering the period from 1935 to 1936.

In view of the fact that it is stipulated in paragraph (d-1) of the deed of mortgage that, in case of default on the part of the mortgage debtor in the payment of interest or taxes or insurance premiums, the principal of the loan shall mature and the mortgage creditor is authorized to take immediate possession of all the properties covered by the mortgage and collect the rents from the same until the complete liquidation of the mortgage has been made, it is reasonable and logical to presume that the parties thereto carried out the terms of the mortgage; and it is unbelievable that Hodges, who is a well-known financier and money-lender who has amassed a fortune through his investments, would have been so neglectful of his rights and interests as to fail to use the authority given him, not only by means of the communication sent to him by defendant, but also by the terms of the deed of mortgage, to protect his investment by collecting those rents beginning from June, 1936, when Lacson defaulted in his payments.

According to the trial Court, the net amount of rents collected by Hodges from the tenants of the Lacson building amounted to ₱530 each month. But when we examined the various statements of Hodges, we found that in one instance he stated that the amount collected monthly was "at most about ₱500 to ₱600 a month;" in answer to a question, referring to Exhibit G, he said: "The girl—the clerk Avelina Magno—brought up there in the amount of ₱53,767.74. *I think we collected this sum.* There is no question about the account"; while in another portion of his testimony he said that he had collected from Lacson the sum of ₱4,473 "*desde el comienzo hasta terminar*"; and again in answer to another question he said "*todo lo mas ₱60 al mes.*" We cannot conceive that a man like this plaintiff would have granted a loan of ₱50,000 on the security of the real estate of defendant, if he had known beforehand that those properties would yield only not more than ₱60 a month.

Our attention is called by counsel for appellant to the fact that in enumerating the tenants of the Lacson building, the trial Court failed to mention the following: "Continental Store," "I. Beck, Inc.", "Benipayo Press," "San Remigio

Copper Mines", etc., whose rents aggregate an amount which, if added to those mentioned by the Court *a quo*, would show beyond contradiction that the testimonies given by the defendant Lacson and his witnesses, to the effect that the monthly total of the rentals collected was between ₱1,000 and ₱1,400, is factually true. Ariston Galon, an employee of Hodges, testifying in civil case No. 90 of the Court of First Instance of Iloilo, entitled "Lacson vs. Zamora" (Exhibit A), said that Hodges collected from the tenants of said building more or less ₱1,000, because, according to said witness: "*El Sr. Mariano R. Lacson cobraba la parte de arriba.*" We believe that the importance and weight of the testimony of this witness cannot be overlooked, it having been given while he was an employee of plaintiff; it clinches the contention of appellant that, during the period of five years, from the middle of 1936 until the outbreak of the last war in December, 1941, those rents amounted to at least ₱1,000 a month—not only ₱530 a month, as found by the lower Court.

Hodges, by means of Exhibit K, which is alleged to be a proposed deed of sale, dated November 19, 1941, claimed that Lacson was willing to sell his building and the land on which the same is erected for ₱77,730.80 which, according to him, is the amount of the defendant's debt computed on that date. Upon being questioned by counsel, the plaintiff himself stated that the defendant did not give his consent to such transaction. It was, therefore, preposterous for him to sell to the lower Court the idea that negotiations were afoot for carrying out a deal whereby Lacson, in view of his inability to comply with the terms of the deed of mortgage, was willing to settle his indebtedness consisting of ₱50,000 as principal, and interest, by affixing his signature to a deed (Exhibit M) by virtue of which he would have been forever deprived of his ownership of such valuable property.

In this connection, counsel for appellant claims that if we pay particular attention to the kind of paper used and the type of its contents, which reveal that said exhibit was recently prepared, it is unbelievable that such document would have been taken by Hodges to the mountains, when he escaped from the Japanese troops, and presented the same at the trial of this case to support his contention that conversations had been held between him and the defendant for the settlement of this matter. We must not forget that, according to Hodges, all his books of accounts have been destroyed when he fled to the mountains, for which reason we disagree with the lower Court when the latter admitted said Exhibits G and H, based on entries made thereon, as evidence for the plaintiff, because, as already stated, we believe that they are self-serving and, therefore, inadmissible. Apparently, the item of ₱77,730.80 was copied from said Exhibit G, and if we take into con-

sideration that, according to Exhibit C, the aggregate assessed value of the properties of Lacson at the time of the execution of the mortgage was ₱101,000, it is unthinkable that Mariano R. Lacson would have been willing to part with the ownership of such a valuable property for a smaller sum.

With respect, therefore, to the counter-claim of defendant Mariano R. Lacson, it having been shown that plaintiff Hodges collected from the tenants of the Lacson Building rentals amounting to at least ₱1,000 a month, or ₱12,000 a year, it appears that the total amount of rentals collected by him from the tenants of said building is ₱60,000. The mortgage was executed on May 31, 1935, and Lacson paid the interest due on the principal until May 31, 1936. Based on a conservative estimate, in the year ending May 31, 1937, Hodges collected rents from the tenants of said building at the rate of at least ₱12,000, which is ₱6,000 more than the interest due on the principal of the loan. Such sum should be deducted from the principal of the debt and thus the net amount due as of May 31, 1947, was ₱44,000, and this procedure should be followed with every following year, and the excess in rental collection made by Hodges over interests due increased in proportion to the gradual decrease of the principal. So, on December 8, 1941, the indebtedness of Mariano R. Lacson to C. N. Hodges was only ₱6,613.05.

Inasmuch as we hold in this decision that the payment made by Mariano R. Lacson to the Office of the "Enemy Property Custody" of the Japanese Military Administration is valid, the damage suffered by defendant Lacson is, therefore, an amount equal to the difference between ₱81,200 in Japanese currency paid by him on July 19, 1944, and ₱6,613.05 which was due to Hodges as of December, 1944. Even assuming for the nonce that the payment made by Lacson to the office of the "Enemy Property Custody" of the Japanese Military Administration is void, then Hodges would be entitled only to a judgment against Lacson for ₱6,613.05, which is the balance of his debt to Hodges on December 8, 1941, without interest on account of the moratorium and because Hodges having fled to the United States it became physically impossible for Lacson to pay the interest and the principal even if he so desired.

In view of all the above premises, we, therefore, reverse the judgment of the lower Court. Let another one be entered in the record of this case holding that Mariano R. Lacson, on December 8, 1941, was indebted to C. N. Hodges in the sum of ₱6,613.05, and that Mariano R. Lacson's payment to the office of the "Enemy Property Custody" of the Imperial Japanese Army discharged said debt. Plaintiff C. N. Hodges shall therefore take nothing

from defendant Lacson by virtue of his complaint, neither the latter from the former by reason of his counter-claim.

Without pronouncement as to costs. So ordered.

Endencia and Felix, JJ., concur.

Judgment reversed.

[No. 1940-R. July 12, 1948]

VICENTE MOYA ET AL., petitioners, *vs.* THE PROVINCIAL SHERIFF OF PANGASINAN ET AL., respondents

1. PLEADING AND PRACTICE; COURTS; COURT OF APPEALS, JURISDICTION OF; WRIT OF PROHIBITION AND PRELIMINARY INJUNCTION; AUTHORITY OF THE COURT OF APPEALS TO GRANT; CASE AT BAR.—When parties desiring to appeal only take some steps seemingly aimed at an appeal but do not display a serious effort to perfect an appeal on or before the expiration of the period therefor, there is reason to doubt that the writ of prohibition and preliminary injunction prayed for by them is sought in aid of the appellate jurisdiction of this Court and, hence, that the Court of Appeals, has authority to grant said relief (Rule 67, section 4, Rules of Court; section 30, Republic Act No. 296).
2. ID.; WRIT OF PROHIBITION; MOTION IMPLAIDING PARTY; COURT'S ERROR IN ACTION THEREON, NOT REVIEWABLE BY WRIT OF PROHIBITION.—Whether or not the lower court erred in not acting on the motion of a party to be impleaded as party plaintiff or party defendant, or in denying the same, is a matter which may be reviewed, if at all, on appeal, not by a writ of prohibition, for said question does not affect the jurisdiction of the lower Court, or the finality of its decision, or the validity of the writ of execution complained of.
3. ID.; APPEAL; MOTION FOR NEW TRIAL; MOTION PRO-FORMA, ITS EFFECT UPON PERIOD WITHIN WHICH TO APPEAL.—The "motion for new trial" filed by the other petitioners in the instant case did not suspend the running of the 30-day period to perfect an appeal, not only because said motion was not set for hearing (Manakil & Tizon *vs.* Revilla, 42 Phil., 81), but, also, because it does not point out specifically the findings or conclusions of the judgment which are allegedly unsupported by the evidence or contrary to law, and makes no specific reference to the testimonial or documentary evidence or to the provisions of law claimed to be contrary to such findings or conclusions, apart from failing to attach thereto the requisite affidavits of merits relative to the evidence alleged to be newly discovered—in violation of rule 37, section 2, Rules of Court—and, in the language of the Supreme Court, "motions of this kind have been considered as motions pro-forma intended merely to delay the proceedings, and, as such, they cannot and will not interrupt or suspend the period of time for the perfection of the appeal" (Alvaro *vs.* De la Rosa, 42 Off. Gaz., 3161). Despite the filing of said motion for new trial, the period to appeal, with the extension of 10 days granted in the order of July 3, expired, therefore, on July 15, 1947, on which date the decision of May 29, 1947, became final, none of the parties having perfected an appeal on or before the expiration of the period therefor (July 15, 1947).
4. ID.; RECEIVERSHIP; APPOINTMENT OF A RECEIVER; LOWER COURT'S JURISDICTION TO APPOINT RECEIVER NOTWITHSTANDING APPEAL OF

CASE.—Before the instant case was called for hearing, petitioners herein filed a motion to discharge the receiver appointed, by the lower court, in case No. 9640, presumably to take charge of the property involved therein and of the fruits thereof, pending final determination of their present petition for a writ of prohibition. The motion seems to be predicated upon the premise that the filing of said petition divested the lower court of its authority to appoint a receiver, and vested such authority exclusively in the Court of Appeals, which is erroneous, for case No. 9640 is pending before the respondent court. It is not before us on appeal, and, even if it were, the lower court would have jurisdiction to entertain a petition for the appointment of a receiver (Rule 61, sec. 1, Rules of Court; *Velasco vs. Co Chuico*, 28 Phil., 39). Hence, said motion for the discharge of the receiver should not be granted.

ORIGINAL ACTION in the Court of Appeals. Writ Prohibition and Preliminary injunction.

The facts are stated in the opinion of the court.

Menares & Cruz for petitioner.

Esliza, Monta & Bauzon for respondents.

CONCEPCION, J.:

Petitioners Vicente Moya, Segundo Mirador, Raymunda Milagrosa, Maximo Marzan and Flora Mia, assisted by her husband, Apolonio More, apply for a writ of prohibition, and a writ of preliminary injunction, to annul, and restrain enforcement of, a writ of execution issued by the Court of First Instance of Pangasinan in civil case No. 9640 thereof, upon the ground that the judgment therein rendered is not, as yet, final and executory. After the filing of respondents' answer and of petitioners' reply thereto, the case was set for hearing, at which the opposing counsel argued orally, and upon the filing of their respective memoranda thereafter, the case was submitted for decision.

Despite the numerous exhibits presented and the memoranda filed, it is regrettable that a good many of the pertinent facts are not clearly set forth in the record, thus requiring a painstaking and rather difficult examination thereof, from which we gather the following:

Early in the year 1947 respondent Antonio Mascariña filed a complaint—which was amended on March 8 of the same year (rec., pp. 113–115) and docketed as civil case No. 9640 of the Court of First Instance of Pangasinan—against Segundo Mirador, his wife Raymunda Milagrosa, and Maximo Marzan and the latter's wife, Florentina Moya, who died subsequently, or on March 16, 1947. The purpose of the action was to revive a decision rendered, on June 10, 1941, in favor of said Antonio Mascariña, as plaintiff in civil case No. 8232 of the same court, and against the defendants therein, Filoremo Mirador and Segundo Mirador. Later on, Vicente Moya intervened in case No. 9640. We do not have before us a copy of the pleadings, not even of the decision, in case No. 8232. The parties

herein have, also, failed to enlighten us on the specific issues raised in the two cases, although it would seem that the litigation referred to the title and possession of a certain real estate, described in the aforementioned complaint in case No. 9640 as follows:

"A parcel of land located at barrio San Juan, Infanta, Pangasinan, having an approximate area of 44,948 square meters bounded on the N., by hills and Jose Milanio, on the E., by Raymundo de la Cruz, Jose Milanio, Reymundo Mirador and Bartolome Madarang, on the S., by Roberto Milagrosa, Juan Milagrosa and Raymundo Mirador, and on the W., by Pio Monta, Jacinto Mocelina, River, Roberto Milagrosa and Catalino Moso; actually declared and covered by tax No. 12818 in the name of plaintiff, Antonio Mascariña (a combination of the five parcels of land fully described in the amended complaint of civil case No. 8232 of this Court as the properties covered by tax Nos. 12267 to 12271 in the name of defendant Florentina Moya), and assessed at ₱980."

and alleged to have been adjudged in said case No. 8232 as the property of Antonio Mascariña, in view of a deed of sale in his favor. Neither have the parties herein attached to the record hereof copy of the other pleadings in case No. 9640 or of the decision therein rendered on May 29, 1947, but the dispositive part thereof appears to be couched in the following language:

"In view of the foregoing considerations, the Court has come to the conclusion that the plaintiff has the preponderance of evidence in his favor, and judgment is hereby rendered in favor of the plaintiff and against the defendants and the intervenor, in the following tenor, viz:

"(a) Ordering the revival of the decision in civil case No. 8232 of this Court;

"(b) Declaring the plaintiff as the owner of the property in question, including the improvements, and possession of same be immediately restored to him;

"(c) Ordering the removal of the house of defendants Segundo Mirador and Raymunda Milagrosa from the southern part of the property;

"(d) Ordering defendants Segundo Mirador and Raymunda Milagrosa to pay the amount of ₱200 as rentals for the years 1945 and 1946 (?), and ₱100 yearly until possession shall have been restored to the plaintiff;

"(e) Ordering defendants Segundo Mirador and Raymunda Milagrosa to pay to plaintiff the sum of ₱500 as damages;

"(f) Ordering the dismissal of the counterclaim of the defendants;

"(g) Ordering the dismissal of the claim of ownership by intervenor Vicente Moya; and

"(h) Ordering the defendants and intervenor to pay the costs of this suit."

Copy of this decision was served on and received by Manuel Madarang, counsel for the defendants in case No. 9640, on June 4, 1947. Twenty-one days thereafter, or on June 25, Segundo Mirador and Maximo Marzan filed a motion for new trial (pp. 51-52, rec.), dated June 20, upon the ground of newly discovered evidence and that said decision is contrary to law and to the evidence, at the same time praying that the hearing of the motion be held in abeyance until after they had engaged the services of

new council and that "the running of the period within which to appeal from the judgment dated May 29, 1947, *which expires on July 5, 1947*, be suspended." Segundo Mirador and Maximo Marzan, also, filed a motion, dated June 27, 1947, to be allowed "to hire new counsel" and to "suspend the running of the 30-day period within which to move for a new trial or to file a notice of appeal, appeal bond and record of appeal," and a "notice of change of counsel", of the same date, stating that Manuel Madarang was no longer authorized to represent them, and that they had contracted the services of the "law firm of Menarez and Cruz, attorneys-at-law, 3rd floor, Pilar Building, 109 Plaza Santa Cruz, Manila, who, effective upon the filing of their formal appearance," would be their counsel of record (see record CA-G. R. No. 1626-R, pp. 6-9). On July 3, 1947, the Court issued an order giving the defendants "10 days more from the expiration of the 30-day period provided by the law within which to file the notice of appeal, appeal bond and record on appeal" (rec., p. 53).

Alleging that this extension of time ended on July 15, the original 30-day period having expired on July 5, Antonio Mascariña filed, on July 17, a "bill of costs and motion for execution," upon the ground that the judgment of May 29, 1947, is already final and executory, the defendants having failed to appeal therefrom or on before July 15, 1947 (rec., pp. 54-56). The consideration of this motion for execution was held in abeyance by an order of July 26, 1947, which, however, denied the motion for new trial of Segundo Mirador and Maximo Marzan of June 20, 1947 (rec., pp. 57-58). On August 4, those defendants, thru Attorneys Menarez and Cruz, sought a reconsideration of the order of July 3, 1947, and asked that said motion for new trial of June 20 be set for hearing on a "later date" and that the clerk of court be ordered to thereafter serve copies of all motions to said counsel (rec., pp. 59-62, 128-132). Under date of August 16, 1947, the latter filed another motion for new trial, predicated upon other allegedly newly discovered evidence (rec., pp. 21-34). Both motions were denied, the first, by an order of August 23, (rec., p. 66), and, the second, by an order of September 12, 1947 (rec., p. 70). On September 15, Flora Mia filed a "motion to be impleaded as a party plaintiff or party defendant," as well as for a new trial, both of which Vicente Moya asked the Court to grant in a motion dated September 22 (rec., pp. 10-15, and 26-30). It seems that the actions—or, at least, the motion of Vicente Moya—were denied by an order dated October 17, 1947 (see rec., p. 133).

Prior thereto, or on September 17, plaintiff therein had moved for the execution of the judgment, which was granted by an order of October 2, 1947 (rec., pp. 71-75). On October 8, the writ of execution, and, on October 15,

the corresponding notice of sale to be held on November 14, 1947, were issued by the acting clerk of court and the acting provincial sheriff, respectively (rec., pp. 6-7). On the date last mentioned, the latter sold the "rights, interests and participation which the defendants Segundo Mirador and Raymunda Milagrosa have or might have" in a parcel of residential land of about 2,925 square meters, to respondent Antonio Mascariña, and in a parcel of rice land of about 3,120 square meters to Lucas Mendoza (rec., pp. 174-175).

Meanwhile, or under date of September 18, the defendants and the intervenor asked an "extension of time to file notice of appeal, appeal bond and record on appeal," and on October 7, they moved for the reconsideration of the order of October 2, directing the issuance of a writ of execution (rec., pp. 21-25). Under date of October 29, Vicente Moya filed a motion of reconsideration of the order of October 17 (rec., pp. 133-137). On November 4, the court issued an order declaring that the decision rendered on May 29, 1947, had already become final, and denying, accordingly, the motion for reconsideration of August 4, and, by implication, the motion of September 18 (rec., p. 76). On November 7, Vicente Moya requested permission to file a supersedeas bond to stay the execution of the judgment (rec., pp. 8-9), but, the present case having been instituted in the meantime, the lower court issued an order dated December 4, 1947, declining to pass upon said motion until after the petition herein for a writ of prohibition shall have been decided by the court of Appeals (rec., p. 186). Vicente Moya, likewise, filed: (a) on October 29, a notice of his intention to appeal from the decision dated May 29, and the orders dated July 26, August 23, September 12, and October 2 and 17 (rec., p. 140); (b) on October 31, an "ex-parte motion to admit the appeal bond" (rec., p. 142); and (c) on November 12, an "exception to the order dated November 4, 1947" (rec., p. 151).

No record of appeal was filed, at any time, in case No. 9640, by the petitioners herein. The most that can be said is that, although some steps seemingly aimed at an appeal were taken by Vicente Moya only, not by the other petitioners herein, even the former has not displayed a serious effort to perfect an appeal. Thus, there is reason to doubt that the relief prayed for by petitioners herein is sought in aid of our appellate jurisdiction and, hence, that we have authority to grant said relief (Rule 67, section 4, Rules of Court; section 30, Republic Act No. 296). At any rate, even if we had jurisdiction to pass upon the merits of the case, it is clear that the petitioners have no cause of action against respondents herein.

To begin with, not being parties in case No. 9640, Flora Mia and Apolonio More, obviously have no right

to question the validity of the writ of execution therein issued. As already stated, it is not clear whether or not the motion of Flora Mia of September 15, praying that she "be impleaded as a party plaintiff or party defendant," has been acted upon by the respondent court, although Vicente Moya's motion of October 29 (rec., pp. 132-137)—praying for the reconsideration of an order of October 17 denying the same, is a matter which may be reviewed, if at asking the court "to order a new trial, *impleading Flora Mia as a necessary party*"—suggests a denial of the latter's motion of September 15. In any event, whether or not the lower court erred in not acting on this motion or in denying the same, is a matter which may be reviewed, if at all, on appeal, not by a writ of prohibition, for said question does not affect the jurisdiction of the lower court, or the finality of its decision of May 29, 1947, or the validity of the writ of execution complained of.

Secondly, although his counsel, Manuel Madarang, admittedly received, on June 4, 1947, copy of the decision rendered in case No. 9640, neither Vicente Moya, nor any other person on his behalf took any step to appeal from said decision until over 3 months and a half later, or on September 22, 1947, the date of his aforesaid "motion for reconsideration and new trial," in which he expressed himself, also, in favor of the inclusion of Flora Mia as party in the case (rec., pp. 10-16). The decision had become final, therefore, as regards Vicente Moya, long before he had tried to appeal therefrom.

Thirdly, the "motion for new trial" filed by the other petitioners herein (Segundo Mirador, Raymunda Milagrosa and Maximo Marzan), on June 25, 1947, as defendants in civil case No. 9640, did not suspend the running of the 30-day period to perfect an appeal—which began on June 4, 1947, the date on which Manuel Madarang, their counsel, received copy of said decision—not only because said motion was not set for hearing (*Manakil & Tison vs. Revilla*, 42 Phil., 81), but, also, because it does not point out specifically the findings or conclusions of the judgment which are allegedly unsupported by the evidence or contrary to law, and makes no specific reference to the testimonial or documentary evidence or to the provisions of law claimed to be contrary to such findings or conclusions, apart from failing to attach thereto the requisite affidavits of merits relative to the evidence alleged to be newly discovered—in violation of Rule 37, section 2, Rules of Court—and, in the language of the Supreme Court, "motions of this kind have been considered as motions pro-forma intended merely to delay the proceeding, and, as such, they cannot and will not interrupt or suspend the period of time for the perfection of the appeal" (*Alvero vs. De la Rosa*, 42 Off. Gaz., 3161). Despite the

filings of said motion for new trial, the period to appeal, with the extension of 10 days granted in the order of July 3, expired, therefore, on July 15, 1947, on which date the decision of May 29, 1947, became final, none of the parties having perfected an appeal on or before the expiration of the period therefor (July 15, 1947).

Counsel for the petitioners have tried to impress us with the alleged justice of their cause, by attaching to the record hereof several documents (rec., pp. 19-20, 35-36, 187-193, 195-197) purporting to show that they are entitled to portions of the land involved in cases Nos. 8232 and 9640 of the Court of First Instance of Pangasinan, by virtue of deeds of conveyance executed in their favor many years before the institution of said cases. We cannot entertain, however, this contention of the petitioners for the same refers to the merits of those cases, upon which we have no jurisdiction to pass, not being before us on appeal. Moreover, inasmuch as Case No. 9640 was instituted to revive the decision rendered on June 10, 1941, in case No. 8232, such decision must be already final and executory, for, otherwise, the petitioners herein would have contested the existence of a cause of action to revive it and would have moved for the dismissal of case No. 9640 upon the ground of pendency of another action, between the same parties and for the same cause, and they have made no allegation to this effect, either in case No. 9640, or in these proceedings. In other words, the issues sought to be raised by petitioners herein would seem to be barred, therefore, by a prior judgment—the one handed down in case No. 8232.

Before this case was set for hearing, petitioners herein filed a motion (rec., pp. 154-160) to discharge the receiver appointed, by the lower court, in case No. 9540, presumably to take charge of the property involved therein and of the fruits thereof, pending final determination of their present petition for a writ of prohibition. The motion seems to be predicated upon the premise that the filing of said petition divested the lower court of its authority to appoint a receiver, and vested such authority exclusively in the Court of Appeals, which is erroneous, for case No. 9640 is pending before the respondent court. It is not before us on appeal, and, even if it were, the lower court would have jurisdiction to entertain a petition for the appointment of a receiver (Rule 61, sec. 1, Rules of Court; *Velasco vs. Go Chuico*, 28 Phil., 39). Indeed, we have purposely refrained from interfering with the exercise of the authority of the lower court, by not issuing the writ of preliminary injunction requested by petitioners herein. In any event, in view of our conclusions on the merits of the present case, said motion for the discharge of the receiver should not be granted.

Respondents have called the attention of this Court to the statement in petitioners' memorandum (rec., p. 180), dated December 29, 1947, reading:

"* * * Vicente Moya made it appear that, he is on his own and that, the lawyer of Segundo Mirador and other defendants, is not his lawyer, * * *."

which is false and allegedly constitutes contempt of court. It appearing that the answer in intervention filed by Vicente Moya (rec., pp. 200-201) in case No. 9640, was signed by Manuel Madarang, as his counsel, and that petitioners' counsel admit, in subdivision (i) of paragraph 11 of their reply in this case (rec., p. 106), that Manuel Madarang was counsel for Vicente Moya in case No. 9640, we find that counsel for petitioners herein should be required to show cause why disciplinary action should not be taken against them.

In view of the foregoing, the petition for a writ of prohibition and for a writ of injunction, as well as petitioners' "motion to discharge receiver", are hereby denied, with costs against the petitioners, and let Attorneys Minares and Cruz be, as they are hereby, required to show cause, within five days from notice hereof, why they should not be punished for contempt, for having made the misrepresentation above referred to. It is so ordered.

Montemayor, Pres., J., and Dizon, J., concur.

Petition denied.

[No. 2316-R. July 15, 1948]

BASILIO FAGARAGAN, contestant and appellant, *vs.* RUPERTO VALBUENA, contestee and appellee

ELECTION LAW; APPRECIATION OF BALLOTS; CASE AT BAR.—In the case at bar, several ballots bearing hardly discernible finger-prints were considered valid and not considered deliberately marked to identify the voters who cast them. The following were, however, considered invalid: (1) Ballot with the word "soitic" (swindler) prefixed to the surname of the candidate, for being a marked ballot; (2) Ballots wherein the names of candidates for governor, mayor, vice-mayor, and the first two places for councilor were written in ordinary lead pencil and the names of the candidates for members of the provincial board and the last four places for councilors were written with colored pencil, making the intervention of a second person in the preparation of the ballot a very strong possibility; (3) Ballots containing initials only (section 149, par. 15, Republic Act No. 180; Deles *vs.* Alkonga, 53 Phil., 93; Ignacio *vs.* Navarro, 57 Phil., 1000; Coscolluela *vs.* Gaston, 35 O. G. 343); (4) Ballots with the names of conspicuous politicians voted for offices for which they are not candidates and are not eligible for being non-residents (*Raymundo vs. de Ungria* cited in the Revised Election Code by Francisco, p. 203); and (5) Ballot with nickname "Pento" appearing on the space for mayor, said nickname, being an isolated case, not being sufficient to identify the person voted for.

APPEAL from a judgment of the Court of First Instance
of Ilocos Norte. Barot, J.

The facts are stated in the opinion of the court.

*Felix R. Domingo, Francisco C. Castro, Jr., Castor Raval,
Benjamin B. Guerrero and Florendo B. Martin* for appellant.
Conrado Rubio and Ulpiano R. Arzadon for appellee.

DIZON, J.:

This is an appeal taken by the protestant-appellant, Basilio Fagaragan, from the decision of the Court of First Instance of Ilocos Norte declaring that the protestee and appellee, Ruperto Valbuena, was elected to the office of Municipal Mayor of Pinili, Ilocos Norte, with a majority of six votes, in the general elections held on November 11, 1947, having obtained a total of 942 votes as against 936 votes in favor of the protestant and appellant.

The appellant and the appellee were the only registered candidates for the office of Municipal Mayor of Pinili, Ilocos Norte, in the general elections aforesaid. On November 12, 1947, the Municipal Board of Canvassers of said municipality, on the basis of the statements submitted by the different Boards of Election Inspectors of the eight electoral precincts thereof, declared that the appellant had obtained a total of 938 votes as against 946 votes for the appellee and proclaimed the latter the Municipal Mayor elect of Pinili.

On November 24 of the same year the appellant filed the corresponding motion of protest in which he alleged irregularities committed in precincts 1, 3 and 4. On December 8 the trial court appointed three commissioners to revise the votes cast in the three precincts aforesaid. On the 18th of the same month the commissioners submitted their report showing, among other things, the following result:

"Precinct No. 1—white ballots:	
"Total number of valid ballots	218
"Unquestioned ballots for Fagaragan	66
"Questioned ballots for Fagaragan	48
	114
"Unquestioned ballots for Valbuena	65
"Questioned ballots for Valbuena	25
	90
"Unclaimed ballots by either party	14
"Precinct No. 3—white ballots:	
"Total number of valid ballots	217
"Unquestioned ballots for Fagaragan	56
"Questioned ballots for Fagaragan	21
	77
"Unquestioned ballots for Valbuena	113
"Questioned ballots for Valbuena	22
	135

"Unclaimed ballots by either party	5
"Precinct No. 4—white ballots:	
"Total number of valid ballots	254
"Unquestioned ballots for Fagaragan	51
"Questioned ballots for Fagaragan	28
	<hr/>
	79
"Unquestioned ballots for Valbuena	143
"Questioned ballots for Valbuena	32
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	175"

Upon the resumption of the hearing on December 22nd both parties withdrew objections to a certain number of ballots, as a result of which the following appear to be their respective standing with respect to the unquestioned and the questioned ballots in the precincts involved in the protest:

"Precinct No. 1:	
"Unquestioned ballots for Fagaragan	87
"Questioned ballots for Fagaragan	27
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	114
"Unquestioned ballots for Valbuena	76
"Questioned ballots for Valbuena	14
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	90
"Precinct No. 3:	
"Unquestioned ballots for Fagaragan	59
"Questioned ballots for Fagaragan	18
	<hr/>
	77
"Unquestioned ballots for Valbuena	125
"Questioned ballots for Valbuena	10
	<hr/>
	135
"Precinct No. 4:	
"Unquestioned ballots for Fagaragan	60
"Questioned ballots for Fagaragan	19
	<hr/>
	79
"Unquestioned ballots for Valbuena	153
"Questioned ballots for Valbuena	22
	<hr/>
	175"

According to the above the appellant questions a total of 46 ballots claimed by the appellee, while the latter objects to a total of 64 ballots claimed by the former. The pertinent portions of the decision appealed from bearing upon these questioned ballots appear, on pages 13 to 31 thereof. We deem it sufficient, for the purpose of this decision, to quote that part wherein a comprehensive summary is made by the trial court.

"Summarizing, the Court rejects the ballots marked as Exhibits B and B-1, 2, 3, 4, 5, and 6 in Precinct No. 1; Exhibits C-2, C-4, C-5 and C-8, and 29, 30, 31, 32, 33, and 34 in Precinct No. 3; and D, D-1, D-2, D-3, D-4, D-8 and D-11, and 49 and 50 in Precinct No. 4. It credits in favor of the protestee the ballots marked as Exhibits B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10,

B-11, B-12, and B-13 in Precinct No. 1; C, C-1, C-3, C-6, C-7, and C-9 in Precinct No. 3; and D-5, D-6, D-7, D-9, D-10, D-12, D-13, D-14, D-15, D-16, D-17, D-18, D-19, D-20, and D-21 in Precinct No. 4. To the protestant the Court credits in Precinct No. 1 the ballots marked as Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27; in Precinct No. 3, the ballots marked as Exhibits 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46; and in Precinct No. 4, the ballots marked as Exhibits 47, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65. Subtracting 21 ballots from the 27 questioned ballots in Precinct No. 1 and adding them to the unquestioned ballots in the same precinct, 12 ballots from the 18 questioned ballots in Precinct No. 3 and adding them to the unquestioned ballots in the same precinct, and 17 ballots from the 19 questioned ballots in Precinct No. 4 and adding them to the questioned ballots in the same precinct, the protestant obtained 108 votes in Precinct No. 1 71 in Precinct No. 3, and 77 in Precinct No. 4. On the other hand, subtracting 12 ballots from the 14 questioned ballots in Precinct No. 1 and adding them to the unquestioned ballots in the same precinct, 6 ballots from the 10 questioned ballots in Precinct No. 3 and adding them to the unquestioned ballots in the same precinct, and 15 ballots from the 22 questioned ballots in Precinct No. 4 and adding them to the unquestioned ballots in the same precinct, the protestee obtained a total of 88 votes in Precinct No. 1, 131 in Precinct No. 3, and 168 in Precinct No. 4. The following tables show the number of votes respectively obtained by the protestant and the protestee in three precincts involved in this protest:

Precinct No. 1:

"Valid ballots for Fagaragan	108
"Rejected ballots for Fagaragan	6
<hr/>	
	114
"Valid ballots for Valbuena	88
"Rejected ballots for Valbuena	2
<hr/>	
	90

Precinct No. 3:

"Valid ballots for Fagaragan	71
"Rejected ballots for Fagaragan	6
<hr/>	
	77
"Valid ballots for Valbuena	131
"Rejected ballots for Valbuena	4
<hr/>	
	135

Precinct No. 4:

"Valid ballots for Fagaragan	77
"Rejected ballots for Fagaragan	2
<hr/>	
	79
"Valid ballots for Valbuena	168
"Rejected ballots for Valbuena	7
<hr/>	
	175

"Accordingly, the protestant and the protestee respectively obtained the following votes by precinct in the eight electoral precincts of Pinili, Ilocos Norte:

Candidates	1	2	3	4	5	6	7	8	Total
"Basilio Fagaragan	108	150	71	77	64	95	186	185	936
"Ruperto Valbuena	88	160	131	168	136	125	66	68	942"

(Appealed decision, pp. 30 to 32)

The appellant questions the appealed decision only as to the ballots specified in the following assignments of error:

I

"The trial court erred in finding that the ballots marked as Exhibits B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-12, B-13, C, C-1, D-14, D-15, D-16, D-17, D-18, D-19, and D-20 are not marked, in the crediting them as valid votes for the appellee, and in declaring that the Ilocano word "Soitic" (Swindler) found in Exhibit 20 is an appellation of affection and friendship in the absolute absence of evidence to support said conclusion.

II

"The trial court erred likewise in holding that the ballot marked as Exhibit D-5 was prepared by only one person, instead of by two persons, and in crediting it as a valid vote for the appellee.

III

"The trial court erred in concluding that the ballots marked as Exhibits D-6 and D-7 were prepared by two different persons, instead of by only one person, and in crediting them as valid votes for the appellee.

IV

"The trial court erred in rejecting the ballots marked as Exhibits 1, 2, 3, 4, and 33 as valid votes for the appellant.

V

"The lower court finally erred in not finding that the appellant was elected to the office of Municipal Mayor of the municipality of Pinili, Province of Ilocos Norte in the General Elections held on November 11, 1947 with a majority of 20 votes over the appellee, and in declaring instead that it was the appellee who was elected such municipal mayor with a majority of 6 votes over the appellant."

On the other hand, to further sustain the decision appealed from, the appellee contends that the trial court erred in refusing to invalidate certain ballots objected to by him, and in not considering as valid votes cast for him other ballots objected to by the appellant. Said ballots are specified in his assignments of error as follows:

I

"El juzgado a quo erró al no considerar marcadas las balotas identificadas como Exhibitos 8, 9, 10, 11, 12, 13, 14, 15, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 56, 57, 58, y 59 y consiguientemente al adjudicarlos como votos válidos a favor del apelante.

II

"El juzgado a quo erró al no considerar balotas marcadas las identificadas como Exhibitos 7, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 37, 47, 48, 60, 61, 62, 63, 64, y 65 y consiguientemente al adjudicarlos como votos válidos a favor del apelante.

III

"El juzgado a quo erró al rechazar como votos válidos del protestado las balotas marcadas como Exhibitos C-2 y C-8.

IV

"El juzgado a quo erró al no considerar como balotas válidas a favor del Protestado las marcadas como Exhibitos C-4, C-5, D-8, y D-11."

We shall now consider appellant's contention (first assignment of error) that the ballots marked as Exhibits B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-12, B-13, C, C-1, D-14, D-15, D-16, D-17, D-18, D-19, and D-20 are marked ballots and should not be counted as valid votes for the appellee. After a careful examination of the alleged identification marks appearing on each and every one of these contested ballots, we have reached the conclusion that the decision appealed from must be sustained. The record fails to disclose sufficiently that these ballots were deliberately marked to identify each and every one of the voters who cast them. The alleged marks are fingerprints which, in the majority of cases, appear to be hardly discernible. Their appearance gives rise to the possibility that they were stamped on the ballots accidentally by the voters themselves when they took hold of them after having been required to affix their thumbmarks on the electoral census. It is true that the alleged marks appearing on the ballots marked as Exhibits B-9 and B-11 are apparently of blue ink, but this does not alter the situation it being possible that besides using a colored stamping pad the board of inspectors used ordinary blue ink to take the fingerprints of the voters.

On the line or space for vice mayor on the ballot Exhibit D-20 the following is written in pencil "Soitic Coloma." After a careful reflection upon the necessity for the prefix and the possible purpose that prompted the voter to write it, we have come to the conclusion that the objection against the same—that of being a marked ballot—must be sustained. There is no evidence to show that the candidate voted for Vice Mayor was generally known in the community where he lived as "Soitic Coloma." In fact this ballot is apparently the only one cast in the three contested precincts where Coloma is given the prefix in question. The only possible purpose of the voter, therefore, as far as we are allowed to glean it from the record, is either that of marking or identifying his ballot or that of making use of the right to vote to insult another with impunity. Either one should be sufficient to invalidate the ballot.

The appellant contends that the ballot Exhibit D-5 appears to have been prepared by two persons and should be invalidated. The trial court, however, held that "an examination of the writings on this ballot shows that it was prepared by only one person who used two different pencils." (Decision p. 18.)

A close examination of the questioned ballot supports the correctness of appellant's view. It appears upon its face that while the names of the candidates for governor, mayor, vice-mayor, and first two places for councilor were written with an ordinary lead pencil, the names of the candidates for members of the provincial board and the last four

places for councilor were written with a colored pencil. From the appearance of the ballot it seems entirely possible that the voter wrote only one of the two groups of names and another person wrote the other. Another possibility—although a remote one—is that the voter himself wrote the names written with a colored pencil inside the booth—where as a rule colored pencils are available—and filled up the other blanks outside the booth where he used an ordinary lead pencil. It is highly improbable for one and the same person to have prepared the whole ballot inside the booth, because if he started using an ordinary lead pencil—which he used to write the first name appearing on the ballot—there could have been no reason for him to lay it aside and use a colored one, because after writing the names of two candidates for the provincial board with a colored pencil he reverted to the use of the ordinary lead pencil to write the four following names, and dropped the lead pencil again to write the last four names with a colored pencil. These circumstances make intervention of a second person in the preparation of the ballot a very strong possibility, and the ballot must, therefore, be declared invalid.

We have likewise examined the ballots Exhibits D-6 and D-7 which, according to the appellant (third assignment of error), should have been invalidated upon the ground that they were written and prepared by the same person, and we are convinced that the trial court was right in holding the contrary. A minute comparison of the handwriting appearing on both ballots fails to convince us that only one hand wrote the names appearing thereon. There is absolutely no similarity between the capital letter "B" of the surnames Bautista, Buduan and Baniaga appearing on the last three spaces for councilor on the ballot Exhibit D-6 with the same capital letter appearing on the same spaces on the ballot Exhibit D-7, where the said surnames are written. The same thing can be said of the capital letter "C" of the surname Coloma appearing on the space for vice mayor on the ballot Exhibit D-6 and the capital letter C appearing on the space for the same position on the ballot Exhibit D-7. These differences more than suffice to convince us that the two ballots were prepared by two different persons and were, therefore, correctly counted as valid votes.

In his fourth assignment of error the appellant contends that the lower court erred in rejecting the ballots marked as Exhibits 1, 2, 3, 4, and 33. On the space for the position of mayor in Exhibits 1, 3, 4 and 33 only the initials B F are written, while on the same space of the ballot Exhibit 2 the voter wrote the following: "Bas" "Pag." In the light of the provisions of section 149 paragraph (15) of Republic Act No. 180, the ballots Exhibits 1, 3, 4, and 33 were correctly rejected. No ballot contain-

ing initials only may be considered valid (*Deles vs. Alkongga* 53 Phil., 93, *Ignacio vs. Navarro*, 57 Phil., 1000, *Coscolluela vs. Gaston*, 35 Official Gazette 343).

However, we believe that the ballot marked Exhibit 2 where the voter wrote "Bas" "Pag" on the space for mayor should have been counted as a valid vote for the appellant Basilio Fagaragan on the strength of the idem sonans rule (*Coscolluela vs. Gaston*, 35 Official Gazette 343, *Sarenas vs. Generoso*, 61 Phil., 549). This ballot does not fall under the rule excluding ballots where only the initials of a candidate are written, because what we have here is quite a different case. "Bas" and "Pag" sufficiently identify the name, Basilio, and surname, Fagaragan, of the appellant.

Summarizing our findings in connection with the first four assignment of error made in appellant's brief, the result is as follows:

Among the ballots questioned in the first assignment of error only the ballot marked Exhibit D-20 should be declared invalid for being a marked ballot; the ballot Exhibit D-5 to which the second assignment of error refers should likewise be invalidated on the ground that it appears to have been prepared by different persons before it was deposited in the ballot box (Section 149, paragraph 23 of Republic Act No. 180; *Alfaro vs. Tariela G. R.* 43015, March 13, 1935, 3 Lawyer's League Journal p. 163); the ballots marked as Exhibits D-6 and D-7 questioned in the third assignment of error were all correctly counted as valid votes, while out of the five ballots questioned in the fourth assignment of error the ones marked as Exhibits 1, 3, 4 and 33 were rightly rejected while the ballot Exhibit 2 being valid should be added to appellant's votes.

As a result, therefore, the number of votes awarded to the appellant by the trial court—936 votes—must be increased by one vote by counting the ballot Exhibit 2 as a valid vote for him. His total number of vote is, therefore, 937. Upon the other hand, the ballots Exhibits D-20 and D-5 being void the number of votes awarded to the appellee—942—should be reduced by two, his total number of votes to be 940.

We shall now proceed to consider the assignments of error made in appellee's brief. In the first he contends that the 26 ballots therein mentioned should have been rejected on the ground that they are marked. A careful examination of each and every one of said ballots has failed to convince us that they are marked ballots. The finding of the trial court with respect to them must, therefore, be affirmed.

We have reached the same conclusion in connection with the 21 ballots questioned in appellee's second assignment of error, with the exception of the ballot marked

Exhibit 24 where "E. Tirona" and "V. Madrigal" appear voted for the position of members of the provincial board and "Francisco," "Madrigal," "Pecson," "Tañada," "C. Tan" and "F. Lopez" appear voted for councilor. This ballot should have been rejected upon the ground that it is a marked ballot, it being the rule in this jurisdiction that ballots with the names of conspicuous politicians voted for offices for which they are not candidates and are not eligible for being non-residents should invariably be considered as marked and void (*Raymundo vs. de Ungria* cited in The Revised Election Code by Francisco p. 203).

In his third assignment of error the appellee contends that the ballots Exhibits C-2 and C-8 should have been counted as valid votes for him. The trial court held that these two ballots were written by only one person and were consequently invalidated. In support of this finding the trial court says:

"* * * Even a superficial examination of these two ballots shows striking similarities in the form of the writings in one ballot with those in the other, which enables one, even without the aid of a handwriting expert, to arrive at the above conclusion. For instance the initials "A" in "A. Raquiza," and "A. Foronda," all the letters in "Raquiza", the initial "E" in "E. Mendoza," all the letters in "Mendoza," all the letters, including their arrangements and groupings in "Foronda," the "R" in "R. Valbuena," the letters in "Valbuena," the letters in "Coloma," the initial "F" in "F. Edmalin," the groupings and formations in "Edmalin", "S" in "S. Bautista" even the crossing of the T's in "Bautista," the "B" and the "F" in "B. Banaga" and "F. Pajinag," respectively, and the letter formations of the writings in general and the strokes at the end of each surname are so similar that no other conclusion is possible than that these two ballots were prepared by only one person. Exhibits C-2 and C-8, therefore, must be rejected." (Page 17 of the appealed decision.)

After considering the findings made by the trial court in the light of what really appears on the ballots marked Exhibits C-2 and C-8, we find no other alternative but to agree with the conclusion that both ballots were prepared by only one person. A comparison between the handwriting appearing on them is sufficient to drive home this conclusion.

Finally, in his fourth assignment of error the appellee contends that the ballots marked Exhibits C-4, C-5, D-8 and D-11 should have been counted as valid votes in his favor instead of considering the name of the person voted for mayor in Exhibit C-4 as illegible, the nickname appearing on Exhibit C-5 on the space for mayor as insufficient, and the name of the person voted for mayor in Exhibits D-8 and D-11 as illegible and not *idem sonans* with Valbuena. We agree with the trial court that the name of the person voted for mayor in Exhibit C-4 is illegible. One can not tell with even a small degree of certainty whether it is "Vanno" or otherwise. We have arrived at the same conclusion with respect to the ballot

Exhibit D-11. The name of the person voted for mayor is also illegible. We cannot, therefore, apply to it the rule of *idem sonans*. We likewise agree with the trial court that the ballot marked Exhibit C-5 should be invalidated because the nickname "Pento" appearing on the space for mayor is not sufficient to identify the person voted for. The ballot Exhibit D-8 must, however, be counted as a valid vote for the appellee Ruperto Valbuena because the surname "Valbuena" written therein, on the space for mayor is unquestionably *idem sonans* with Valbuena.

Summarizing our findings in connection with ballots questioned in the assignments of error made by the appellee, we have the following:

No one of the ballots questioned in the first assignment of error is a marked ballot; the ballot Exhibit 24 is a marked ballot and should, therefore, be deducted from the number of votes adjudicated to the appellant, all the other ballots questioned in the second assignment of error being valid; the ballots Exhibits C-2 and C-8 (third assignment of error) were rightly invalidated, and of the ballots questioned in the fourth and last assignment of error the one marked Exhibit D-8 should be counted as valid vote for the appellee. It must be stated, however, that in the case of the ballot Exhibit D-11 the opinion of the Court was not unanimous, but the admission or rejection of the same not being sufficient to alter the result, the Court has not deemed it necessary to refer the matter to a division of five.

As a result, one vote must be deducted from the total number of votes herein awarded to the appellant after considering only the assignments of error made in his brief. In other words, the total number of valid votes received by him is 936. On the other hand, one vote must be added to the number of votes heretofore awarded to the appellee after considering only the assignments of error made in appellant's brief. The total number of valid votes received by him is 941.

Thus modified the decision appealed from is affirmed, with costs.

Montemayor, Pres. J., and Concepción, J., concur.

Judgment modified.

[No. 1068-R. July 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ALDORICO VERGA and JOSE VERGA, accused and appellants.

CRIMINAL LAW; HOMICIDE; TREACHERY AS QUALIFYING CIRCUMSTANCE,
NOT PRESENT; CASE AT BAR.—It appearing that the accused
met the deceased face to face and assaulted him also face

to face after addressing him a few words and pulling his leg, it cannot be said that the assault began treacherously. It is, of course, obvious that the subsequent attack made by the accused and his companion, the first with his bolo and the second with his dagger, while the deceased was lying defenseless on the ground were characterized by treachery, but these attacks being a mere continuation or incidents of the aggression that started without alevosia, the treachery with which they were attended does not qualify the crime committed. (People vs. Cañete, 44 Phil., 478; People vs. Durante, 53 Phil., 369, and U. S. vs. Balagtas, 19 Phil., 164, 172-173.)

APPEAL from a judgment of the Court of First Instance of Iloilo. Macalintal, J.

The facts are stated in the opinion of the court.

Glicerio G. Gimotea for appellants.

Assistant Solicitor-General Rosal and Solicitor Bautista for appellee.

DIZON, J.:

Aldorico Verga, Jose Verga, Emilio Verga and Pacifico Bañes were charged in the court below with the murder of Leodegario Laguda and after trial said court acquitted Emilio Verga and Pacifico Bañes for insufficiency of evidence but found Aldorico and Jose Verga guilty, and considering in their favor the mitigating circumstance of voluntary surrender, sentenced each of them to suffer an indeterminate penalty of not less than twelve (12) years and one (1) day nor more than twenty (20) years of reclusión temporal, with the accessory penalties provided by law, to indemnify, jointly and severally, the heirs of the deceased Leodegario Laguda in the sum of ₱2,000, without subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. Aldorico and Jose Verga appealed and now contend that the lower court committed the following errors:

I

"The trial court erred in holding that Jose Verga was the one responsible in inflicting the dagger-wounds of Leodegario Laguda, and in convicting him with his co-appellant.

II

"The trial court erred in giving more weight to the evidence of the prosecution and in disregarding the evidence of self-defense interposed by Aldorico Verga.

III

"The trial court finally erred in finding the appellants guilty of murder with qualifying circumstance of treachery and one mitigating circumstance of voluntary surrender, and in not acquitting them for failure of the prosecution to establish their guilt beyond reasonable doubt."

After a careful review of the evidence we consider the following facts to have been established beyond reasonable doubt:

At a "velación" held in a house located in barrio Libertad, Balasan, Iloilo in the night of June 27, 1946, Aldorico Verga asked a lady guest to dance with him. Notwithstanding the lady's refusal Aldorico insisted in his request, thus prompting one of the guests, Leodegario Laguda, to ask him to desist because the owner of the house had not given permission to the guests to dance. As Aldorico refused to give up his idea Leodegario held him on the back and Aldorico, in turn, elbowed him on the chest. This precipitated a fist fight between them which was stopped only when the owner of the house and some guests intervened. They not only stopped the fight but succeeded in pacifying the combatants who shook hands with one another.

At about 7 o'clock the following morning, while Leodegario and his brothers, Gregorio and Emigdio, were on their way to barrio Malapoc, Balasan, Iloilo, to plow a farm, they were met at barrio Cabalic, of the same municipality, by the appellant Aldorico Verga, accompanied by his cousins, Emilio and Jose Verga and a relative named Pacifico Bañes. Addressing Leodegario, who was then riding on a carabao, Aldorico said: "You are here now," and suddenly pulled his left foot. As he saw Aldorico unsheathing his bolo, Leodegario jumped off the carabao and ran away but with such bad luck that he stumbled and fell to the ground face downwards. Aldorico, hot on his pursuit, overtook him in that position and immediately struck him with his bolo at the back of the neck inflicting upon him thereat a five and one-half inch wound. While Leodegario was trying to grasp his assailant's bolo with his bare hands the other appellant, Jose Verga, came and stabbed him several times with his dagger.

Gregorio and Emigdio, the victim's brothers, were too fear-stricken to render any help. Gregorio, however, succeeded in running to town to report the assault to chief of police, while Emigdio, after the assailants had left, approached his wounded brother.

The chief of police arrived at the scene of the crime a short time later and found Leodegario still alive and able to tell him the circumstances under which he was assaulted, naming Aldorico as the one who wounded him with a bolo and Jose as the one who stabbed him with a dagger. Leodegario was forthwith taken to the municipal building where he was treated by Dr. Gagui, president of the sanitary division, and where he also affixed his thumb mark on, and swore to his *ante mortem* statement, Exhibit D, after the same had been read to him by the chief of police. He expired at 1:30 p. m. that same day as a result of the wounds inflicted upon him as already referred to and which Doctor Gagui found to be as follows:

- "1. Stab wound about 1½ cm. in width on the left scapular region, pierced the skin, ribs, and middle portion of scapula and lungs.

- "2. Stab wound about 1 cm. in width at its opening, a little to the left of the spinal column wounding the vertebræ.
- "3. Stab wound on the right scapular region about 1½ cm. at its opening wounding the muscles of the right scapular region.
- "4. Stab wound on the middle portion of the left forearm involving skin, and subcutaneous tissue.
- "5. Cut wounds involving small, ring and middle fingers of left hand.
- "6. Big cut wound about 5½ inches long of the neck involving the whole muscles. Wound extends to the base of the skull cutting important nerves and blood vessels.
- "7. Stab wound about 1 cm. at its opening involving skin and muscles of the right front chest near the right nipple."

"The causes of death were:

- "1. Internal hæmorrhage.
- "2. External hæmorrhage.
- "3. Shock."

That same day Aldorico and Jose surrendered to the authorities, the former with a bolo, Exhibit C, and the latter with the dagger, Exhibit B.

It is not disputed that Leodegario Laguda died from the wounds above described. The defense claims, however, that it was the appellant Aldorico Verga alone, acting in self-defense, who inflicted them all. Its theory on this point is stated in detail in appellant's brief as follows:

"On June 28, 1946, at about 7:00 in the morning, Aldorico Verga was riding on and grazing his carabao at the sides of the rice paddies near the house of Luis Berberio. While he was bending to remove the mud with his bolo (Exhibit A of the prosecution and Exhibit 4 of the defense) from the mouth of his carabao, his carabao was suddenly scared. Turning to find out the cause, Aldorico saw Leodegario Laguda trying to stab him with a dagger, Exhibit B. He tried to fall at the side of his carabao opposite Leodagario's to escape from being hit but, when he was getting up, Leodegario followed him over to the other side of his carabao and stabbed him once more, wounding him at the left side of his back, per Exhibit 1 of the defense (s. n., Mercado, p. 23).

"Aldorico Verga tried to run away, after having been wounded, but Leodegario pursued him and tried to stab him further. So, he faced Leodegario and struck him with his bolo, hitting him at the neck. Leodegario became more furious and attacked Aldorico aggressively with the dagger, Exhibit B. Aldorico succeeded in stopping Leodegario's hand and in wresting the dagger, but his bolo was also knocked off from his hand. Aldorico tried to get away, but Leodegario accidentally caught him by the belt, and he was not able to pull out immediately because the latter was stronger (S. N. Mercado pp. 23-25).

"Aldorico saw Ignacio and Gregorio Laguda coming and running toward them, with bolos in their respective hands, together with three or four more men behind them. When Igmedio and Gregorio were nearing, only 30 or 40 meters away more or less, Aldorico began stabbing Leodegario with the dagger, Exhibit B until the latter's hold on the former relaxed. Aldorico, then, fled, and he was pursued by Ignacio and Gregorio to a distance of 50 meters more or less (S. N. Mercado, pp. 25-26).

"On the same morning, June 28, 1946, at about 7:00, Pacifico Bañez was harrowing his rice paddies, which was about 250 meters away from the place of the incident. While conversing with Rafael Tingson who came to his farm, Pacifico Bañez heard shouts about

the fighting from several women and children who were planting rice on the farm of Luis Berberio. At that time, Igmedio and Gregorio Laguda were also riding on their respective carabaos, grazing at the rice paddies adjoining the farm which was harrowed by Pacifico Bañez, but they were 20 or 30 meters nearer to the place of the incident (S. N. Mercado, pp. 2-3). Jose Verga was also riding on and grazing his carabao at the side of the hill adjoining the rice paddies of Pacifico Bañez, but he was a little farther than the two brothers, Igmedio and Gregorio, from the scene of the incident and had not seen the fighting until he had gone over the hill towards the farm of Pacifico Bañez, who called him up and informed him of the fight. Jose Verga followed Pacifico Bañez running to the scene of the incident but, while approaching the body of Leodegario prostrate on the ground, the former (Jose Verga) was struck by Igmedio with a bolo who was returning from the pursuit of Aldorico, and he was wounded on the left hand. To escape from further injury, Jose Verga fled, following the way taken by Aldorico, overtaking the latter and joining him in going to the municipal building in Balasan (S. N. Mercado, Emilio Verga was likewise plowing his farm the very same morning and time of the incident, which is about half a kilometer from the scene of the incident. But his farm was separated by higher hill, and his three co-accused did not know that he was there. He knew of the incident only upon arriving at the place where Leodegario lay prostrate after he was summoned through Carlos Fuentes by the Chief of Police, Ramon Bayot (S. N. Masias, p. 55)." (Appellants' brief pp. 3 to 6.)

That there was a fistic encounter between Aldorico Verga and Leodegario Laguda at the "velación" the night previous to the murder is not denied, but the defense claims that while Aldorico was on his way home that evening, Leodegario followed him and, without further provocation, assaulted him with a cane and that after Aldorico had returned the blow he ran away. If this were true Aldorico should have been the one to harbor ill feelings against Leodegario and not viceversa. It is difficult for us to believe, therefore, that Leodegario could have gone to barrio Cabalic the following morning to attack Aldorico in the treacherous manner described by the latter in the course of his testimony.

Other circumstances make the theory of self-defense quite hard to believe. In the first place, it is claimed that Aldorico was in an open field riding on his carabao which was grazing "at the sides of the rice paddies near the house of Luis Berberio"; that while he was trying to clean the mouth of his carabao the latter got scared and when Aldorico turned around to find out what was the matter he saw Leodegario trying to stab him with a dagger. If Aldorico was really in the place mentioned by the witnesses for the defense he should have seen Leodegario coming towards him long before the alleged unsuspected assault with the dagger. Leodegario, therefore, could not have possibly attempted to assault him in the treacherous manner described. In the second place, it is claimed that Leodegario was the first to wound Aldorico on the back with his dagger. After receiving such wound it is doubt-

ful whether Aldorico could have been in a position not only to use his bolo effectively but also to wrest the dagger from Leodegario's hand. In the third place, the defense claims that it was only after Aldorico had been stabbed on the left side of his back by Leodegario that he faced the latter and struck him with his bolo, hitting him at the neck. Notwithstanding this serious bolo wound it is claimed that Leodegario became more furious and continued attacking Aldorico succeeding in knocking off the bolo from the latter's hand. The bolo wound referred to involved "about five and one-half inches long of the neck involving the whole muscles" and extends "to the base of the skull cutting important nerves and blood vessels" (Exhibit A). After receiving a wound of such seriousness, Leodegario could not have continued attacking Aldorico in the manner claimed by the defense.

That Aldorico was never treated of the stab wound allegedly inflicted upon him by Leodegario makes his whole story suspicious and doubtful. His claim that he was treated three times cannot be taken seriously because his testimony does not even disclose the name of the person who administered the treatment. The certificate issued by Dr. Ferrer to the effect that he had found a scar on the back of Aldorico does not suffice to fill this void in the defense evidence because the examination was made by Dr. Ferrer 17 days after the incident. His Honor, the trial judge, who saw and heard the appellant Aldorico Verga testify, had serious doubts and actually refused to believe that the scar found by Dr. Ferrer on the back of Aldorico was that of a wound inflicted upon him by the deceased Leodegario, and said the following upon this question:

"At the trial, to be sure, he showed a scar in his back, which he claims is the scar of the wound inflicted upon him by Leodegario on the day in question; but it appears that that is not the only scar of the same shape and formation that he has in his back. Furthermore upon examination by this court, the location of the said scar does not coincide with the tear shown in the shirt Exhibit 2, which he was wearing on that occasion; nor does the said shirt show blood stains in such parts thereof and in such profusion as would ordinarily be caused by a stab wound described by the accused." (Pp. 14-15, rec.) (Brief of Sol. Gen., p. 10.)

The theory of the defense regarding the participation of the appellant Jose Verga is likewise unconvincing. It is claimed that Jose was grazing his carabao quite a distance away from the place where Aldorico and Leodegario were fighting and that upon taking notice of the fight he joined Bañez in going to the scene thereof; that "while approaching the body of Leodegario prostrate on the ground, the former (Jose Verga) was struck by Igmedio (Laguda) with a bolo while he was returning from the pursuit of Leodegario, and he was wounded on the left hand." If this were true we do not doubt that Jose

would have been seriously wounded; at least he should have suffered a wound more serious than the one caused on his third finger which, quoting Dr. Ferrer, “* * * bastante pequeña la cicatriz que es difícil identificar el instrumento causante” (trans. p. 54 Sept. 18, 1946). Besides it is a proven fact that Jose Verga surrendered to the authorities with the dagger Exhibit B. If he did not participate in the commission of the crime, why should he allow himself to be mixed up in it first, by surrendering to the authorities and second, by surrendering a weapon allegedly used in the fight? The claim that the dagger was given to him by Aldorico because the latter was afraid to lose it while they were on their way to surrender deserves but scant consideration. In the first place, there was no need for Aldorico to do that, the loss of the weapon being a very remote possibility. In the second place, if the dagger really belonged to Leodegario and the latter used it in the fight, Aldorico was the person most interested in keeping it safe, and we do not doubt that he would have preferred to have it in his own possession until its surrender to the authorities.

In view of all the foregoing we are of the opinion, and so hold, that both appellants took active part in the killing of Leodegario Laguda in the manner and form stated heretofore. However, the appealed judgment, as recommended by the Solicitor-General, should be modified insofar as it finds them guilty of murder. It appearing from the evidence that Aldorico Verga met Leodegario Laguda face to face and assaulted him also face to face after addressing him a few words and pulling his leg, it cannot be said that the assault began treacherously. It is, of course, obvious that the subsequent attacks made by Aldorico and Jose, the first with his bolo and the second with his dagger, while Leodegario was lying defenseless on the ground were characterized by treachery, but these attacks being a mere continuation or incidents of the aggression that started without alevosía, the treachery with which they were attended does not qualify the crime committed (People vs. Cañete, 44 Phil., 478, People vs. Durante, 53 Phil., 369, and U. S. vs. Balagtas 19 Phil., 164, 172-173. The crime committed is, therefore, that of mere homicide defined and penalized by Article 249 of the Revised Penal Code by reclusión temporal, the appellants being entitled to the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same.

Wherefore, the appellants Aldorico Verga and Jose Verga are hereby sentenced to an indeterminate penalty of not less than eight (8) years of *prisión mayor*, nor more than twelve (12) years and one (1) day of *reclusión temporal*. Thus modified the appealed judgment is hereby affirmed.

Montemayor, Pres., J., and Concepción, J., concur.

Judgment modified.

UNITED STATES OF AMERICA

PHILIPPINE ALIEN PROPERTY ADMINISTRATION

Vesting Order No. P-573

(Amendment)

**Re: PERSONAL PROPERTY OWNED BY
SAM EVANS**

Vesting Order No. P-573, dated March 10, 1948, is hereby amended as follows and not otherwise:

By deleting subparagraphs 2(a) and 2(d) and substituting thereto the following:

(a) That certain debt or other obligation owing to Sam Evans by the National City Bank of New York, Manila Branch, Philippines, arising out of a bank account entitled "Sam Evans" having a balance of ₱2,822.17, together with any and all accruals thereon and any and all rights to demand, enforce and collect the same;

* * * * *

(d) Fifteen thousand (15,000) shares of stock of the Atok-Big Wedge Mining Co., a corporation duly organized and existing under the laws of the Philippines domiciled and having its principal place of business in the City of Manila, represented by Certificates Nos. 29491 and 29879, with a par value of ₱0.10 per share.

All other provisions of said Vesting Order No. P-573 and all actions taken by, or on behalf of the Philippine Alien Property Administrator in reliance thereon, pursuant thereto and under the authority thereof, are hereby ratified and confirmed.

Executed at Manila, Philippines, on March 27, 1950.

WILLIAM R. ALLEN
Deputy Administrator

Filed with the OFFICIAL GAZETTE on March 27, 1950, at 3:20 p.m.

VESTING ORDER NO. P-839 (as amended)

Re: CASH OWNED BY THE HEIRS OF MURATA

Under the authority of the Trading with the Enemy Act, as amended, the Philippine Property Act of 1946, and Executive Order No. 9818, and pursuant to law, after investigation, it is hereby found:

That the heirs of Murata, whose addresses are unknown but who are believed to be presently residing in Japan, are nationals of a designated enemy country (Japan);

That the property described as follows:

Cash in the sum of ₱500 representing the rentals collected by the Enemy Property Custodian from the occupant of a house formerly owned by Murata (now deceased), located at La Trinidad, Benguet, Mt. Province, Philippines, and transferred to Finance Officer, PHILCOM,

is property within the Philippines owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Japan);

And it is hereby determined:

That to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan);

All determinations and action required by law having been made and taken, and it being deemed necessary in the national interest;

There is hereby vested in the Philippine Alien Property Administrator the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States, in accordance with the provisions of the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this Order may, within two years from the date hereof, or within such further time as may be allowed, file with the Philippine Alien Property Administrator on Form PAPA-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claims.

Executed at Manila, Philippines, on March 28, 1950.

WILLIAM R. ALLEN
Deputy Administrator

Filed with the OFFICIAL GAZETTE on March 28, 1950, at 3:50 p.m.